



2026/962

30.4.2026

COMMISSION DECISION (EU) 2026/962

of 22 December 2025

**on the measure SA.64153 (2022/C) (ex 2021/N) implemented by the Czech Republic providing aid
for terrestrial television parallel broadcasting in DVB-T2/HEVC**

(notified under document C(2025) 8837)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions ⁽¹⁾ cited above and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) The Commission received two complaints: one from *Česká asociace satelitních operátorů z. s.* (hereafter 'ČASO') on 19 September 2016, and one from *DIGI TV s.r.o.* (now *Telly s.r.o.*, hereafter 'Telly') on 14 February 2018. ČASO is an association representing two companies, Telly and Canal + Luxembourg ⁽²⁾, which provide television services over the internet and via satellite. They complained about the Czech authorities' plan to support financially terrestrial television platform operators in the transition from the technical standards DVB-T ⁽³⁾/MPEG-2 ⁽⁴⁾ to the more advanced standards DVB-T2 ⁽⁵⁾/HEVC ⁽⁶⁾. The Commission received complementary information in the subsequent years until May 2021.

⁽¹⁾ OJ C 282, 22.7.2022, p. 9.

⁽²⁾ ČASO was set up on 27 July 2016 for the purpose of, inter alia, safeguarding and promoting the collective and individual interests of its members in Czechia. The members of ČASO are Telly and Canal + Luxembourg Sàrl, formerly known as M7 Group. See paragraphs 8 and 46 of judgment of 14 May 2025, *Telly and ČASO v Commission*, Joined Cases T-362/21 and T-363/21, EU:T:2025:493.

⁽³⁾ Digital Video Broadcasting – Terrestrial (DVB-T) is the first-generation standard for the broadcast transmission of digital terrestrial television, published in 1997.

⁽⁴⁾ Moving Pictures Expert Group – 2 (MPEG-2) is a standard for encoding digital video and audio, published in 1996.

⁽⁵⁾ DVB-T2 is the second generation of DVB-T, published in 2008. DVB-T2 offers significant benefits compared to DVB-T, such as increased transmissions speed/capacity and a more efficient use of the spectrum.

⁽⁶⁾ High Efficiency Video Coding (HEVC) is one of the latest generations of digital encoding standards for video and audio, published in 2013. HEVC is considered to achieve significant bitrate reduction for the same quality than other encoding standards, such as MPEG-4 AVC (50% bitrate reduction) and MPEG-2 (70% bitrate reduction).

- (2) On 2 December 2016, the Czech authorities pre-notified several measures related to terrestrial television platform operators in the context of the release of the 700 MHz band. Several written exchanges and meetings took place between the Czech authorities and the Commission between 2017 and 2021. These measures included:
- (1) Compensation of costs for the upgrade and retuning of digital terrestrial television networks. This measure was dealt with by Commission Decision of 23 January 2020 in case SA.55742, where the Commission approved the compensation of spectrum-related equipment ('Decision in case SA.55742') ⁽⁷⁾.
 - (2) Compensation of costs for the simultaneous operation of the existing DVB-T networks and the DVB-T2 transitional networks.
 - (3) Extension of existing radio frequency allocations held by digital terrestrial television network operators until 2030. This measure was dealt with by Commission Decision of 15 March 2021 in case SA.55805, which found that the prolongation of spectrum assignments did not constitute aid ('Decision in case SA.55805') ⁽⁸⁾.
- (3) On 16 July 2021, the Czech authorities formally notified a measure entitled "Simultaneous broadcast compensation related to the transition to DVB-T2 standard" ('the notified measure', recital (2)(2) point 2). This measure aims at compensating operators of digital terrestrial broadcasting platforms for (i) investment costs in new equipment necessary for the construction and the operation of DVB-T2 networks combined with HEVC standard and (ii) operating costs relating to the operation of the new DVB-T2/HEVC networks in parallel with the original DVB-T networks between 1 March 2017 to 18 March 2020 and 1 July to 31 October 2020.
- (4) By letter of 3 June 2022 (the 'Opening Decision'), the Commission informed Czechia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU") in relation to the notified measure and invited Czechia to submit its comments. The Opening Decision was published in the Official Journal of the European Union on 22 July 2022 ⁽⁹⁾. In the same publication, the Commission called on interested parties to submit their comments.
- (5) The Commission received comments from Czechia on 1 July 2022, from the beneficiaries *Ceske Radiokomunikace* (CRa) on 22 August 2022 and *Digital Broadcasting* (DB) on 9 August 2022, and from the complainant ⁽¹⁰⁾ Telly on 21 September 2022. The Commission forwarded the comments received from interested parties to Czechia. Czechia provided its comments on 20 October 2022 and 3 November 2022.
- (6) The Commission requested additional information from Czechia on 29 July 2024 and additional clarifications on 31 March 2025. Czechia provided submissions on 29 August 2024, 14 March 2025, 18 March 2025 and 24 April 2025. Czechia also submitted a letter on 23 June 2025.
- (7) By letter of 10 January 2022, Czechia agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 ⁽¹¹⁾ and to have the decision adopted in this procedure and notified in English. On 4 July 2025, Czechia confirmed that the language waiver applies also for the adoption of the present decision.

⁽⁷⁾ See Commission Decision C(2020) 253 final of 23 January 2020 in State aid case SA.55742 (2019/N) – Czech Republic Aid for the replacement of the frequency-dependent equipment for broadcasting in the context of migration from the 700 MHz band (OJ C 144, 30.04.2020, p.1).

⁽⁸⁾ See Commission Decision C(2021) 1601 final of 15 March 2021 in State aid case SA.55805 (2020/FC) – Extension of DTT network operators' frequency licenses – Czechia. (OJ C 177, 07.05.2021, p.1).

⁽⁹⁾ Commission decision C(2022) 3609 final of 3 June 2022 on State Aid SA.64153 (2022/C) (ex 2021/N) – Czechia - Aid for terrestrial television parallel broadcasting in DVB-T2/HEVC.. (OJ C 282, 22.7.2022, p. 9). See footnote 1.

⁽¹⁰⁾ The other complainant, ČASO indicated by email dated 21 July 2022 that it had provided its comments during the preliminary investigation and that it maintained those comments.

⁽¹¹⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

2. DESCRIPTION OF THE NOTIFIED MEASURE

2.1. Scope of the measure

- (8) The notified measure concerns financial compensation to be granted to three operators of digital terrestrial broadcasting platforms for the transmission of digital terrestrial TV ('DTT') using transitional networks with the more advanced technical standards DVB-T2 and HEVC. The notified measure would cover eligible costs incurred by those three DTT operators covering the periods between 1 March 2017 to 18 March 2020 and 1 July to 31 October 2020. The notified measure is part of the strategy to release the 700 MHz band by DTT operators in accordance with the Decision (EU) 2017/899 of the European Parliament and of the Council ⁽¹²⁾ (hereafter 'EPaC Decision'), assigning the 700 MHz for wireless broadband services and requiring the release of that spectrum by the terrestrial systems providing of broadcasting services by 30 June 2020.
- (9) The transitional DTT networks using more advanced standards operated in parallel to the existing DTT networks (simulcasting) using older standards during the period 1 March 2017 – 31 October 2020, in order to facilitate the transition to the newer technologies in the context of the release of the 700 MHz band.
- (10) Czechia had initially foreseen that the transitional networks would be operated until 30 June 2020. Because of the COVID-19 pandemic, Czechia extended their operation until 31 October 2020. In addition, the Commission has approved aid for an extension of the simulcast obligations during the COVID-19 pandemic, under the COVID-19 Temporary Framework ⁽¹³⁾ by way of Commission Decision of 13 July 2021 in case SA.60062 ('Decision in case SA.60062') ⁽¹⁴⁾, which covers the compensation of costs for the extension of those obligations for the period from 19 March 2020 to 30 June 2020.

2.2. Context of the measure

- (11) The measure appears in the context of the obligation stemming from the EPaC Decision to release the 700 MHz band (694-790 MHz) by terrestrial systems providing broadcasting service until 30 June 2020, in order to enable the use of that band for wireless broadband electronic communication services. The possibility of assigning the 700 MHz band for these services had been subject of ongoing discussions at European and international level. Czechia had taken steps to prepare for those changes. The discussions at the EU level resulted in the adoption of the EPaC Decision (recital (8)).

2.2.1. Relevant TV spectrum policy in the EU

- (12) Radio spectrum is a scarce public resource that is essential for some sectors and services, including television broadcasting and wireless broadband services. The radio spectrum is divided into frequency bands with conventional names designated by the International Telecommunications Union (ITU). Some bands present technical characteristics that suit best certain types of services. The use of a band by a particular service is subject to coordination at international level, in order to prevent cross-border interference.

⁽¹²⁾ Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union (OJ L 138, 25.5.2017, p. 131).

⁽¹³⁾ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

⁽¹⁴⁾ See Commission Decision C(2021) 5332 final of 13 July 2021 in State aid case SA.60062 (2021/N) – Czechia COVID-19: Aid for the extraordinary direct costs faced by Czech terrestrial television network operators (OJ C 317, 6.8.2021, p.1).

- (13) Terrestrial television services could initially use the whole frequency band between 470 and 862 MHz. Those frequencies present technical characteristics that are also suitable for wireless broadband services. For this reason, terrestrial television services have progressively been required to liberate part of that spectrum and squeeze in a narrower spectrum bandwidth. First, the use of digital technologies for TV transmission enabled a more efficient use of the spectrum. This triggered the analogue-to-digital switchover. In 2012, in the European Parliament and Council decided that the 800 MHz band (790-862 MHz) would be allocated to wireless broadband services as of January 2013 ⁽¹⁵⁾. As a consequence, terrestrial television services migrated to the lower band (i.e. the 470-790 MHz band) during the analogue-to-digital switchover.
- (14) The World Radiocommunication Conference decided in 2012 that the 700 MHz band (694-790 MHz band) should be allocated as of 2015 to both broadcasting and wireless broadband services. The Radio Spectrum Policy Group recommended in its opinion of 19 February 2015 that a coordinated approach be adopted across the Union to make the 700 MHz band available for effective use for wireless broadband electronic communications services by the end of 2020 ⁽¹⁶⁾.
- (15) On the basis of a Commission's proposal ⁽¹⁷⁾, the EPaC Decision adopted by the co-legislators in May 2017 provided the obligation for Member States to allocate the 700 MHz band exclusively to wireless broadband services by 30 June 2020. The EPaC Decision recognised that the 700 MHz band is a valuable asset to provide both additional capacity and universal coverage for wireless broadband services in particular in rural, mountainous and insular areas as well as indoor uses ⁽¹⁸⁾. As a result, the 700 MHz band had to be made available by 30 June 2020 to terrestrial systems capable of providing wireless broadband electronic communications services ⁽¹⁹⁾. Member States had to adopt national roadmaps to facilitate the use of the 700 MHz frequency band for terrestrial wireless broadband electronic communications services while ensuring continuity for the television broadcasting services that vacate the band ⁽²⁰⁾ while migrating the latter to a lower band, the sub-700 MHz band (470-694 MHz band). On the basis of duly justified reasons, Member States could be allowed to delay the release of the 700 MHz band for up to two years ⁽²¹⁾.
- (16) As regards a possible compensation for the costs related to the release of the 700 MHz band, the EPaC Decision stated that *"Member States may, where appropriate and in accordance with Union law, ensure that adequate compensation for the direct cost, in particular for end-users, of the migration or reallocation of spectrum use is provided promptly and in a transparent manner in order to, inter alia, facilitate transition to more spectrum-efficient technologies"* ⁽²²⁾. Specifically, the EPaC Decision identified DVB-T2/HEVC as such spectrum-efficient technologies ⁽²³⁾. Nevertheless, the EPaC Decision recalled that the scope and the mechanism for such possible compensation should be consistent with Articles 107 and 108 TFEU ⁽²⁴⁾.
- (17) The EPaC Decision also provided the obligation for Member States to ensure the availability of the sub-700 MHz terrestrial television services until at least 2030 ⁽²⁵⁾.

⁽¹⁵⁾ Decision 243/2012/EU of the European Parliament and Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L81, 21.3.2012, p.7).

⁽¹⁶⁾ EPaC Decision, recital (13).

⁽¹⁷⁾ Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union, COM (2016) 43, 2.2.2016.

⁽¹⁸⁾ EPaC Decision, recital (9).

⁽¹⁹⁾ EPaC Decision, Article 1, paragraph 1.

⁽²⁰⁾ EPaC Decision, recital (20) and Article 5.

⁽²¹⁾ EPaC Decision, Article 1, second paragraph.

⁽²²⁾ EPaC Decision, Article 6.

⁽²³⁾ EPaC Decision, recital (20): *"Where Member States intend to maintain DTT, the national roadmaps should consider the option of facilitating upgrades of broadcasting equipment to more spectrum-efficient technologies, such as advanced video formats (e.g. HEVC) or signal transmission technologies (e.g. DVB-T2)."*

⁽²⁴⁾ EPaC Decision, recital (21): *"The scope of and mechanism for possible compensation for completing the transition in spectrum use, in particular for end users, should be analysed in accordance with the relevant national provisions, as provided for by Article 14 of Directive 2002/20/EC of the European Parliament and of the Council and should be consistent with Articles 107 and 108 of the Treaty on the Functioning of the European Union in order, for example, to facilitate the transition to more spectrum-efficient technologies."*

⁽²⁵⁾ EPaC Decision, Article 4.

2.2.2. Relevant TV spectrum policy in Czechia

- (18) Czechia approved the launching of digital television broadcasting in 2004. The transition from analogue to digital broadcasting took place between 2008 and 2012.
- (19) In 2013, Czechia drafted a strategy called *Digitalni Cesko 2.0* ⁽²⁶⁾ which stated that the use of the DVB-T2 standard was the only possible way of developing terrestrial broadcasting ⁽²⁷⁾, in particular for broadcasting more advanced formats such as high-definition television (HDTV). It recognised that HDTV would be required to meet viewers' needs and that a more efficient use of spectrum, with the DVB-T2 standard, would be necessary. It also underlined the technological advance of other platforms, like satellite ⁽²⁸⁾, and the importance of ensuring the availability of compatible television sets for end-users.
- (20) In the context of the ongoing discussions around the future use of the 700 MHz band, Czechia adopted for the release of the 700 MHz by the terrestrial systems for broadcasting services a strategy on 20 July 2016 and the legal bases to ensure this process on 19 July 2017 and 29 August 2018 (recital (26)). In parallel, Czechia and its neighbouring countries undertook coordination negotiations on the frequency channels distribution in order to ensure the release of the 700MHz band and the transition of those systems in the sub-700 MHz band. The revised agreements were signed on 13 September 2017 with Germany and Poland, on 30 November 2017 with Slovakia, on 12 December 2017 with Hungary and on 28 December 2017 with Austria.

2.2.3. Description of the TV broadcasting transmission services market in Czechia

- (21) The broadcasting transmission services market in Czechia has been served by four technological platforms: digital terrestrial TV (DTT), cable, satellite and Internet Protocol Television (IPTV). The DTT platform broadcasts free-to-air TV channels (FTA TV), including the public television channels. Cable, satellite and IPTV technologies mainly broadcast pay-TV services.
- (22) According to the Czech authorities, the analogue-to-digital switchover for terrestrial broadcasting transmission services occurred between 2008 and 2012 and affected market shares of the different technologies on this market. During that period, terrestrial television lost 13% of its market share, satellite television gained 9%, cable television lost 3% and IPTV increased its share by 2% ⁽²⁹⁾.
- (23) Beginning of 2019, 58% of the population watched television content via the DTT platform (40% of the households only relied on the DTT platform). Satellite television was used by around 25% of the households, cable by 17% and IPTV by 8% of. By 2023, the Czech authorities estimated that terrestrial TV had declined to 52.9%, satellite TV had declined to 19.7%, whereas cable and IPTV had increased to 42.1%.

⁽²⁶⁾ *Digitální Česko 2.0, Cesta k digitální ekonomice*, available here https://www.vlada.cz/assets/media-centrum/aktualne/Digitalni-Cesko-v--2-0_120320.pdf, p. 21.

⁽²⁷⁾ Reference is made to that Strategy in *Market failure study of digital terrestrial broadcasting with forced release of the 700 MHz frequency band*, Arthur D. Little, as an expert in the telecommunications industry, for the Czech Ministry of Industry and Trade, 2017, (the "ADL Study"), p. 23 of the translated version submitted by Czechia on 14.10.2021.

⁽²⁸⁾ *Digitální Česko 2.0, Cesta k digitální ekonomice* (footnote 26), mentions that the satellite platform already used DVB-S2 by default and already allowed for the dissemination of HDTVs on a practically unlimited scale.

⁽²⁹⁾ ADL Study as updated on 2 August 2019, p. 11 of the English version of the updated study provided by Czechia.

- (24) Four entities: *Česká televize* ⁽³⁰⁾, *Ceske Radiokomunikace a.s.* (hereafter 'CRA') ⁽³¹⁾, *Czech Digital Group* (hereafter 'CDG') and *Digital Broadcasting s.r.o.* ('DB'), held rights of use of spectrum for the transmission of nationwide terrestrial digital television broadcasting, originally in the sub-700 and the 700 MHz bands, and only in the sub-700 MHz band after the release of the 700 MHz band. In particular, before their prolongation until 2030, the rights of use of frequencies were to expire on 11 May 2021 for CRA, on 4 March 2022 for DB, on 30 May 2023 for *Česká televize* and on 10 January 2024 for CDG. Frequencies rights holders were subject to coverage obligations varying from 95.1% to 99.9% of the population ⁽³²⁾. Following the measures put in place by the Czech authorities, those rights were prolonged in 2019 until 2030.
- (25) Before the upgrade to DVB-T2, there existed four DTT transmission networks (also known as multiplex) using DVB-T in Czechia, operated by the four entities above (*Česká televize*, CRA, CDG and DB). During the transition between 2017 and 2020, three transitional networks using DVB-T2 standard were employed, broadcasting in parallel to the four original networks. After the transition, four DVB-T2 networks continued to operate.
- (1) *Česká televize* is the public broadcaster and managed the existing network 1, the transitional network 11 and now manages the final network 21. The operation of *Česká televize*'s network is outsourced to CRA.
 - (2) CRA managed the existing network 2, the transitional network 12 (which was used to simulcast the content of the existing networks 2 and 3) and now manages the final network 22.
 - (3) CDG (a subsidiary of the CRA group) managed the existing network 3 and now manages the final network 23. CDG was not required to deploy and operate a transitional network. The simulcast of network 3 relied on the capacity of the transitional network 21 operated by CRA.
 - (4) DB managed the existing network 4, the transitional network 13 and now manages the final network 24.

2.3. Detailed description of the measure

2.3.1. Legal basis

- (26) The legal basis of the measure comprises the following acts:
- (1) Act N°127/2005 on electronic communications and amending certain related acts (the 'ECA').
 - (2) Government Resolution N°648/2016 of 20 July 2016 on the Strategy for the Development of terrestrial digital television broadcasting (the '2016 Strategy').
 - (3) Act N°252/2017 of 19 July 2017, amending Act N°127/2005 on electronic communications and amending certain related acts, as amended, and Act N°483/1991 Sb., on the Czech Television, as amended (the 'Digital Amendment').
 - (4) The 'Technical Transition Plan' for the transition from DVB-T to DVB-T2, adopted by Government Decree N°199/2018 Coll. of 29 August 2018 ⁽³³⁾.

⁽³⁰⁾ *Česká televize* is the Czech public broadcaster.

⁽³¹⁾ CRA was part of Macquarie, a global financial group, from 2011 to May 2021 when Macquarie sold it to its current owner, another financial investor, Cordiant. In 2017, Macquarie was a global diversified financial group with offices in 27 countries, managing \$A182.9 billion in assets, covering activities such as asset management worldwide (specialising in infrastructure, real estate, agriculture and energy), corporate and asset financing, banking, financial services, and the capital markets (source: MGL 2017 full-year result - annual report). In 2021, Cordiant Digital Infrastructure Limited was a company specialised in digital infrastructure including data centres, telecommunications towers and fibre networks in the UK, the EEA and North America (source: Cordiant Digital Infrastructure Limited Interim Report 2021).

⁽³²⁾ The obligations are the followings: 99.9% of inhabitants for *Česká televize* and CRA, 98.1% for CDG and 95.1% for DB.

⁽³³⁾ Czechia also adopted modifications to the Technical Transition Plan during the COVID-19 pandemic. Government Decree N°120/2020 Coll. of 19 March 2020: the time limits for switching off DVB-T networks as regulated by Decree N°199/2018 were temporarily suspended. Government Decree N°268/2020 Coll. of 25 May 2020: replacing '30 June 2020' by '31 October 2020' as deadline for the release of the 700 MHz band.

2.3.1.1. The 2016 Strategy

- (27) The 2016 Strategy laid out the policy as regards the development of the transmission of terrestrial television broadcasting in the timeframe until 2030. The rationale behind the 2016 Strategy was, to ensure the transition to more advanced technical standards (i.e. DVB-T2 and HEVC) while ensuring the release of the 700 MHz. The Strategy stayed at the basis of the future legislative measures and of the notification of the notified measure.
- (28) The 2016 Strategy took note of the then ongoing EU negotiations for the release of the 700 Mhz band, including the Commission's proposal for the EPaC Decision. It has foreseen the release of the 700 MHz between 2020 and 2022 (indicating that 2020 was preferred by the Commission at the time). The 2016 Strategy also took note of the 2015 WRC conclusions confirming the use of the sub-700 MHz band for DTT until at least 2030.
- (29) The strategy identified the challenges that the DTT platform would face, and in particular the risk of disappearance or substantial reduction as a result of the release of the 700 MHz band if further measures were not taken. DTT was the only platform that offered free-to-air television (FTA TV) services in Czechia, covering more than 60% of the households. There was a clear consensus among the stakeholders of the DTT platform (TV broadcasters and DTT network operators) on the release of the 700 MHz band through a State-controlled transition to DVB-T2/HEVC, allowing for a more efficient use of the spectrum. The transition to DVB-T2/HEVC had to take place before the release of the 700 MHz spectrum in particular to maintain free-to-air TV in Czechia, otherwise risking a dramatic fall in DTT availability for the population. The transition would represent a mandated accelerated transition compared to the normal cycle of televisions' replacement for citizens. The long-term sustainability of the DTT platform involved a continuous process of improving the quality of both sound and image. At the time, there was no capacity for HD or Ultra HD emissions in the existing networks. In order to accommodate the need for more capacity and to cater for the significant loss of spectrum for DTT, the Strategy considered that it was necessary for the future networks to use DVB-T2/HEVC.
- (30) The strategy identified the following objectives in the process for the release of the 700 Mhz band by DTT (i) the preservation of the status quo in the television broadcasting market as a result of the migration as well as the minimisation of the negative interference on the market in order to avoid the disappearance of the DTT platform; (ii) ensuring the development of the DTT platform, the long-term preservation of the sub-700 MHz band and the effective use of the available spectrum through spectrum-efficient transmission technologies (i.e. DVB-T2 transmission standard) and improvement of the image and sound quality; (iii) a socially acceptable migration process considering the replacement of households' reception equipment; (iv) ensuring the existence of six nationwide DVB-T2 networks after the release of the 700 MHz band⁽³⁴⁾, which required using large Single Frequency Networks ('SFNs')⁽³⁵⁾.
- (31) The 2016 Strategy envisaged the adoption of legislative acts establishing the procedure for the release of the 700 MHz band by DTT services and securing financial support for the release of the 700 MHz band, including support for the transition to the DVB-T2 transmission standard and for parallel broadcasting. An amendment to the ECA was foreseen that would allow reimbursement of costs directly linked to the completion of the transition to DVB-T2.

⁽³⁴⁾ Czechia expected to be able to implement at least six DTT networks on the basis of the Geneva Plan (GE06 Plan). The Regional Radio Conference 2006 (GE06) was an ITU conference that focused on focused on DTT, defining frequency plans and usage conditions in Europe, Middle East and Africa. Countries began implementing the GE06 process from 17 June 2006. The GE06 Plan typically used 6-8 frequencies per layer across Europe.

⁽³⁵⁾ A Single Frequency Network (SFN) is a broadcast network where several transmitters cover an area using the same frequency channel. Without this technical feature, each transmitter would have to use a different frequency channel than other nearby transmitters in order to avoid interference. Thus, the use of a SFN enables the coverage of a larger area by several transmitters using a single frequency, rather than multiple frequencies.

- (32) The 2016 Strategy foresaw the setting up of transitional DVB-T2 networks and a period of simulcasting (i.e., parallel broadcasting) of the existing DVB-T networks and the transitional networks. The terrestrial television sector and the government authorities agreed on the need to launch a controlled DVB-T2 switchover process with three transitional networks. The four DVB-T networks (1, 2, 3 and 4) existing at the time would be replaced by four DVB-T2 final networks (21, 22, 23 and 24). Networks 21, 22 and 23 would be nationwide networks using the same existing transmitter locations as networks 1, 2 and 3. Network 24 would be transformed to allow regional broadcasting based on compatibility with network 4. Three transitional networks A (nationwide), B (nationwide), and R⁽³⁶⁾ (with regional broadcasting) would be used. The transitional network A would seek maximum compatibility with network 1 and final network 21; transitional network B was associated with networks 2 and 3 and final networks 22 and 23. The network R would be regionalised and would be associated with the existing network 4 and final network 24. Transitional networks were to be designed in such a way as to enable as much as possible their subsequent transformation into the final networks. DVB-T2 networks were to have an appropriate signal coverage⁽³⁷⁾. In the future, two additional final networks 25 and 26 would be introduced.
- (33) Simulcasting was needed to, inter alia, stimulate the purchase of adequate reception facilities by households. If allowed by international coordination, the deployment was to start in 2016 and the switch-off of the DVB-T transmitters was to take place at the beginning of 2021. The strategy foresaw the period 2016-2021 for the simulcast, assuming a minimum of 3 years of nationwide simulcasting to stimulate households to get equipped with compatible new television receivers or set-top boxes ('STBs')⁽³⁸⁾. Support for households was to include the certification of compatible equipment.
- (34) The strategy acknowledged the need to compensate DTT operators for the transition in compliance with State aid rules, taking into account the natural investment cycle of DTT⁽³⁹⁾, the existing contractual arrangements with broadcasters that had been set in view of the 2021-2024 timeframe and the investment costs in the controlled transition⁽⁴⁰⁾.
- (35) The strategy also stressed the need to compensate DTT operators for the early release of the 700 MHz band before the expiry of the relevant radio frequency allocations. According to the 2016 Strategy, the early release would not have been possible without a clear agreement between the State, DTT operators and TV broadcasters which have concluded valid contracts with DTT operators. The compensation would target the operators affected by the release of 700 MHz which had frequency allocations expiring beyond 2020, in order to avoid worsening their position otherwise those operators may be expected to initiate investment protection disputes against Czechia⁽⁴¹⁾. Absent the forced migration, the natural transition to DVB-T2 would have probably taken place in a much longer timeframe, around 2024-2025.
- (36) The 2016 Strategy estimated the total amount of compensation for DTT operators related to the transition at CZK 441-627 million (approx. EUR 17-25 million)⁽⁴²⁾, of which CZK 298-416 million (approx. EUR 11.6-16.3 million) corresponded to the simulcast (i.e. operation of the transitional networks).

⁽³⁶⁾ Transitional network R would be set insofar as international coordination allows.

⁽³⁷⁾ At least 95 % of the population or at least the current coverage of the DVB-T Network (99% coverage for the public service television).

⁽³⁸⁾ The time needed for consumers to replace their equipment was estimated at 4-5 years (half the normal TV replacement cycle of 8-10 years). Availability of consumer equipment would be facilitated by the parallel process in the neighbouring Germany.

⁽³⁹⁾ The previous significant investments in the terrestrial television platform date back to 2012 in the context of the analogue-to-digital switchover. The existing DVB-T networks were built between 2008 and 2012, so they were at the beginning of the investment cycle. The natural investment cycle for broadcasting was foreseen around 2024-2025.

⁽⁴⁰⁾ Experience from the switchover from analogue to digital broadcasting showed that the mere implementation of the switchover to DVB-T2 was likely to reduce the market share of the affected DTT platform, favouring other platforms (satellite, cable and IPTV).

⁽⁴¹⁾ See recital 1.3 of the 2016 Strategy, introductory section.

⁽⁴²⁾ In order to present figures in EUR, this Decision will base its calculations on the exchange rate used in the Opening Decision, i.e. EUR 1 = CZK 25.634 on 3 March 2022, as published by the European Central Bank. The exchange rate since the notification (16 July 2021) has stayed within the range 23.271-25.866.

- (37) The 2016 Strategy also envisaged the procedure for the compensation using the Radiocommunication account. Applications for the compensation would have to be submitted by the network operators no later than six months from the date when the costs were incurred or within three months of the date of entry into force of the then future Digital Amendment. The Czech Telecommunication Office ('CTO') would audit the applications.

2.3.1.2. The ECA

- (38) 'ECA' is the main regulatory text for electronic communications and spectrum policy in Czechia. Prior to the 2016 Strategy, the ECA already allowed CTO to change authorisations to use radio frequencies when it is necessary to fulfil commitments related to Czechia's membership to the Union. Such changes may involve compensation for incurred costs by authorisation holders.
- (39) In particular, Section 19, subsection 1(b) of the ECA provided that the CTO may decide to change (or even withdraw under subsection 4(c)) the authorisation to use radio frequencies if it is needed to meet the commitments resulting from the Czech Republic's membership to the Union, NATO or international organisations ⁽⁴³⁾. The CTO was to compensate the holder of the authorisation for any costs they incurred effectively and purposely, through the Radiocommunications account pursuant to Section 27.
- (40) Section 27 of the ECA provides for the Radiocommunications account and compensations for changes of the rights of use spectrum:
- (1) Subsection 1 indicates that the Radiocommunications account, administered by the CTO, is to be used for the purposes of compensation of efficiently and purposefully incurred costs to holders of an authorisation to use radio frequencies, or to the Ministry of Defence in using radio frequencies for military purposes as a result of any changes made in the use of the radio spectrum for reasons including those specified in Section 19 Subsection 1 (b).
 - (2) Subsection 5 describes the procedure for the request of compensation ⁽⁴⁴⁾. The request is to be submitted to the CTO, accompanied by supporting documentation. The CTO shall assess the request, determining the final amount of the compensation.

⁽⁴³⁾ Section 19 of the ECA, prior to the Digital Amendment, stated: "Section 19. Amendment to, Extension, Withdrawal and Termination of the Authorisation to Use Radio Frequencies. (1) The Office may decide to change the authorisation to use radio frequencies: a) if it is needed to meet the commitments resulting from the international treaties binding on the Czech Republic, which treaties were published in the Collection of Laws or Collection of International Treaties, or b) if it is needed to meet the commitments resulting from the Czech Republic's membership of the European Union, NATO or international organisations, [...] Other than the case set out in Clause (e) above, the Office shall inform the persons concerned of its intention to make such changes and shall grant them a period of one month to submit their opinion. In the cases set out in Clauses (a) to (d), the Office may reduce that period, but it may not be less than 7 days. The Office shall state its reasons for reducing that period. (2) If a change occurs as referred to in Subsection 1 (a) to (c), the Office shall compensate the holder of the authorisation or the Ministry of Defence for any costs they incurred effectively and purposely, through the Radiocommunications Account pursuant to Section 27 below. [...] (4) The Office shall decide to withdraw the authorisation to use radio frequencies if: [...] c) such a withdrawal is needed in order to fulfil the commitments resulting from an international treaty binding on the Czech Republic, which treaty was published in the Collection of Laws or Collection of International Treaties, or from the Czech Republic's membership of the European Union, NATO or international organisations, or when the security of the State so requires."

⁽⁴⁴⁾ Section 27 subsection (5) of the ECA: "(5) The holder of an authorisation to use radio frequencies or the Ministry of Defence, who requests compensation for the efficiently and purposefully expended costs for reasons referred to in Subsection 1 above, shall submit to the Office a quantification of these costs, documented by accounting records. The Office shall assess the submitted quantification on the basis of the accounting records, technical documentation and other such primary documents. Having made the assessment, the Office shall confirm the proposed amount of the efficiently and purposefully expended costs or shall determine another amount of costs efficiently and purposefully expended."

- (3) Subsection 6 describes the cost categories for which compensation can be requested, including costs of technical adjustments, depreciated costs of decommissioned equipment, costs of dismantling and decommissioning equipment, and the costs of securing the electronic communications services provided through the existing radio frequencies in a different manner, for the time needed to ensure the necessary technical measures to carry out the changes in the use of radio frequencies ⁽⁴⁵⁾.

2.3.1.3. The Digital Amendment

- (41) The Digital Amendment laid down legislative amendments to the ECA, instructing the government on the preparation of the Technical Transition Plan for terrestrial digital television from DVB-T to DVB-T2/HEVC for the purpose of vacating the 700 MHz band, including the setting up of transitional networks, and establishing the compensation.
- (42) Article II, paragraph 2 of the Digital Amendment stipulated that the Technical Transition Plan would specify the deadlines, conditions and procedures for the provision of DTT in the DVB-T2 standard, including the decommissioning and switch-off of DTT in the DVB-T standard.
- (43) Article II, paragraph 3 of the Digital Amendment indicated that holders of allocations of radio frequencies for the transmission of nationwide digital television broadcasting in the DVB-T will establish transitional networks, for which the CTO will issue individual authorisations to use radio frequencies ⁽⁴⁶⁾. The provision indicates that individual authorisations for transitional networks which may have been issued before the Digital Amendment are also covered by it, however no earlier than 20 July 2016 (i.e. the date of adoption of the 2016 Strategy).
- (44) Article II, paragraph 6 ⁽⁴⁷⁾, indicated that holders of radio frequency allocation for nationwide networks in the DVB-T standard are entitled to reimbursement of costs effectively and efficiently incurred in the process of transition to the DVB-T2 standard to technically ensure the service of transmission of terrestrial television broadcasting using transitional networks. Section 27(5) and (6) of the ECA applied for the purposes of assessment of the request for reimbursement and payment of the reimbursement from the radiocommunication account.

⁽⁴⁵⁾ Section 27 subsection (6) of the ECA: “(6) The costs referred to in Subsection 1 above shall mean: a) the costs of technical adjustments to equipment in the event of changes to the allocated radio frequency or changes to its technical parameters, b) the depreciated cost of equipment used for the current method of using radio frequencies and decommissioned as a result of changes in the use of radio frequencies, c) the costs of dismantling and decommissioning of equipment for the current method of using radio frequencies, d) the costs of installation and commissioning equipment to replace the decommissioned equipment, and e) the costs of securing electronic communications services provided through the existing radio frequencies in a different manner, for the time needed to ensure the necessary technical measures to carry out the changes in the use of radio frequencies.”

⁽⁴⁶⁾ Article II, paragraph 3 of the Digital Amendment: “To implement the transition to the DVB-T2 standard and ensure temporary simultaneous transmission of terrestrial digital television broadcasting in the DVB-T standard and DVB-T2 standard, holders of allocation of radio frequencies for the transmission of nationwide digital television broadcasting in the DVB-T establish transitional networks. [...] A holder of authorisation to use radio frequencies for transitional networks will use the stations of the existing transmitters in the DVB-T standard with such technical parameters that allow, to the greatest extent possible, the same scope of coverage and the least possible negative effects on audience in the transition to the DVB-T2 standard. The Czech Telecommunication Office (“Office”) shall grant individual authorisations to use radio frequencies for the transmission of terrestrial digital television broadcasting using transitional networks upon request of a holder of radio frequency allocation for the transmission of nationwide terrestrial digital television broadcasting in the DVB-T standard operating a transitional network so that terrestrial digital television broadcasting can be transmitted the existing stations of transmitters of nationwide networks in the DVB-T standard of a holder of radio frequency allocation for the transmission of nationwide terrestrial digital television broadcasting in the DVB-T standard. Individual authorisations to use radio frequencies for the transmission of terrestrial digital television broadcasting using transitional networks granted by the Office before this Act's coming into effect, however, no earlier than on 20 July 2016, are considered individual authorisations under this Act.”

⁽⁴⁷⁾ Article II, paragraph 6 of the Digital Amendment: “The holder of the allocation of radio frequencies for national DVB-T networks is entitled to reimbursement of costs effectively and efficiently spent as part of the process of transition to the DVB-T2 standard for the technical provision of terrestrial television broadcasting services through transitional networks and costs related to the change of allocation according to point 5 For the purpose of assessing the request for payment and making payment from the radio communication account, § 27 paragraphs 5 and 6 of Act No. 127/2005 Coll., as amended from the date of entry into force of this Act, shall apply”.

- (45) The costs listed Section 27 of the ECA were estimated on the basis of an external study of May 2017 ('ADL study') ⁽⁴⁸⁾ commissioned by Czechia, based on pricelists and up-to-date information on the construction of transition and final networks in terms of radio frequencies used. Czechia also provided an updated version of the ADL study dated 2 August 2019 ('updated ADL study') ⁽⁴⁹⁾. The updated ADL study analysed several scenarios in order to identify the appropriate response to the market failure triggered by the forced release of the 700 MHz band. The scenarios are (i) upgrade to DVB-T2 with parallel broadcasting, (ii) upgrade to DVB-T2 without parallel broadcasting, and (iii) keeping DVB-T albeit assuming a coverage reduction ⁽⁵⁰⁾. The study provided a qualitative and quantitative assessment of the total costs of the different scenarios for the different stakeholders (i.e. DTT operators, TV broadcasters, households and the State). In the updated ADL study, DTT operators were considered to be negatively affected by the externality of the forced release of the 700 MHz band, unlike the analogue-to-digital transition which affected all technological platforms. As regards DTT operators, the study differentiated between costs for which there was a legal basis for compensation ⁽⁵¹⁾ and other costs (cost of capital invested in the transitional networks and loss of profit from contracts with broadcasters ⁽⁵²⁾) which were considered that could be subject of litigation in possible arbitration proceedings resulting from an early withdrawal of the frequency allocations in the absence of an agreement with the State. As regards broadcasters, the study quantified costs of technical adaptations and loss of profit from advertising. As regards households, the study quantified the costs of replacement of receivers. Lastly, for the State, the ADL study quantified the costs of informing the citizens and administering the transition. Overall, the study found that the scenario of upgrade to DVB-T2 with parallel broadcasting was preferable to a scenario without parallel broadcasting. The upgrade to DVB-T2 with parallel broadcasting required higher compensation to be paid to DTT operators (under the ECA and under the Digital Amendment), albeit significantly reducing the amounts that DTT operators could claim in the context of a possible arbitration. Costs for other stakeholders (broadcasters, households and the State) were also considered to be lower when using parallel broadcasting.
- (46) Article II, paragraph 8, indicates that costs must be incurred by the date of switch-off of the DVB-T networks. Costs incurred before the entry into force of the Digital Amendment, but no earlier than 20 July 2016 (i.e. the date of adoption of the 2016 Strategy), are eligible. Requests for reimbursement of costs incurred before the Digital Amendment were to be submitted within 6 months of the entry into effect of the Digital Amendment.
- (47) The Digital Amendment also provided for the possibility of prolongation of the duration of the existing terrestrial television rights of use of frequencies until 31 December 2030 ⁽⁵³⁾. The Commission found that this prolongation did not constitute State aid (Decision in case SA.55805).

⁽⁴⁸⁾ *Study of digital terrestrial broadcasting market failure as a result of the forced release of the 700 MHz frequency band*, study conducted for the Ministry of Industry and Trade by Arthur D. Little s.r.o., 15 May 2017 ('ADL study').

⁽⁴⁹⁾ See footnote 29.

⁽⁵⁰⁾ The Czech authorities considered the possibility of a scenario of market-led adoption of DVB-T2 in the preliminary assessment of the transition scenarios, but the scenario of market-led adoption did not feature in the final study as it could not offer an appropriate solution in the situation of Czechia.

⁽⁵¹⁾ The updated ADL study dated 2 August 2019 presents an estimation of the quantification of the costs which would require compensation to holders of spectrum assignments according to the different legal basis (see section 4.5.1, table 4, "costs of allocation holders – legislated", of the study). According to that study, costs are divided between costs that are borne with Section 27(6)(a) to (d) of the ECA as legal basis [technical adaptations to existing installations, residual capex, and dismantling] and costs that have the Digital Amendment as legal basis [Article 2(6) for the transitional networks and Article 2(7) for the removal of interferences].

⁽⁵²⁾ The updated ADL study identified that DTT operators could demand, in the context of a possible arbitration and in the scenario of upgrade to DVB-T2 with parallel broadcasting, CZK 138 million (approx. EUR 5,4 million) for the costs of capital employed in the transitional networks and CZK 1 044-1 309 million (EUR 40,7-51 million) for loss of profit from contracts with broadcasters until 2030 (i.e. the reasonable date according to the study until which operators could expect to prolong the allocations based on Section 20(4) and (5) of the ECA).

⁽⁵³⁾ The CTO announced the extension of the rights of use of radio-frequency of Digital Broadcasting (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovyh-kmitoctu-pro-zajisteni-verejne-site-0>) and of Česká televize (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovyh-kmitoctu-pro-zajisteni-verejne-site-1>) on 30 September 2019, and of Czech Digital Group (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovyh-kmitoctu-pro-zajisteni-verejne-site-2>) and of CRa (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovyh-kmitoctu-pro-zajisteni-verejne-site-1>) on 21 November 2019.

- (48) Czechia indicated that Article I, paragraph 2 of the Digital Amendment constitutes a standstill clause within the meaning of Article 108(3) of the TFEU ⁽⁵⁴⁾.

2.3.1.4. The Technical Transition Plan

- (49) The Technical Transition Plan laid down the detailed technical conditions for the transition. Section 3 identified the 4 existing networks (1, 2, 3 and 4), the 3 transitional networks (11, 12 and 13) and the 4 final networks (21, 22, 23 and 24). Section 5 established that final networks 21, 22, 23 and 24 will replace existing networks 1, 2, 3 and 4, respectively. Transitional network 11 is intended to provide simultaneous broadcasting to existing network 1; transitional network 12 to existing networks 2 and 3; transitional network 13 to existing network 4.
- (50) The detailed conditions for each transmitter (e.g. the switch-off dates ⁽⁵⁵⁾, the periods of simulcasting, the frequency channels to be used, etc.) were specified in Annexes 1 to 4, respectively for networks 1 to 4 ⁽⁵⁶⁾:

	Number of high power transmitters	Number of low power transmitters	Number of DVB-T frequencies used (*)	Number of DVB-T2 frequencies used (**)	Parallel broadcasting (***)		
					Start (min/max)	End (min/max)	Duration in months (min/avg/max)
Network 1	27	92	10	3	Mar-18 Jun-18	Nov-19 May-20	20 – 23 – 26
Network 2	26	51	12	5	Mar-17 ⁽¹⁾ Jan-19	Jan-20 Jun-20	13 – 31 – 39
Network 3	24	3	11	5	Mar-17 Jan-19	Jan-20 Jun-20	13 – 31 – 39
Network 4	32	33	8	9	Aug-17 Jun-18	Jan-20 May-20	19 – 24 – 29

Source: Commission analysis based on Annexes 1-4 of the Technical Transition Plan.

(*) Number of DVB-T frequencies used (considering only high-power transmitters).

(**) Number of DVB-T2 frequencies used during parallel broadcasting (considering only high power transmitters).

(***) Start/end dates and duration of the parallel broadcasting. Given that the dates are different for each transmitter location, minimum/average/maximum values for each network are calculated.

⁽¹⁾ The earliest transmitters of network 2 (operated by CRA) started parallel broadcasting in March 2017, ahead of the adoption of the Digital Amendment (July 2017). Out of the 26 high power transmitters of network 2, 12 transmitters started ahead of the Digital Amendment, whereas 14 started afterwards.

- (51) The Technical Transition Plan was amended during the COVID-19 pandemic (footnote 33), postponing the switch-off until 31 October 2020.

⁽⁵⁴⁾ Pursuant to the English version of the Digital Amendment provided by Czechia, the amendment adds to Section 27 of the ECA: "Where proceedings are conducted before the Commission regarding state aid in relation to determination of the amount or payment of effectively and efficiently incurred costs, it shall be considered a request for preliminary ruling".

⁽⁵⁵⁾ Provided that the DVB-T2 network had achieved at least coverage of the existing DVB-T network, unless prevented by natural or justified technical barriers.

⁽⁵⁶⁾ Annex 1 establishes the conditions for transmitters of the existing network 1, transitional network 11 and final network 21. Annex 2 establishes the conditions for transmitters of the existing network 2, transitional network 12 and final network 22. Annex 3 establishes the conditions for transmitters of the existing network 3, transitional network 12 and final network 23. Annex 4 establishes the conditions for transmitters of the existing network 4, transitional network 13 and final network 24. It should be noted that the existing, transitional and final network are build using the same transmitter locations.

- (52) Czechia explained that the actual migration process began in March 2017, when the concerned DTT operators gradually set up the transitional networks operating on temporarily available frequencies. The existing DVB-T networks were gradually switched-off as from November 2019. The final networks were partially built on the transitional networks. To a large extent, the transitional networks have broadcasted the same content as the one aired on the existing networks, with some television programs being broadcasted in HD in the transitional networks. The total capacity of each network covered by the transition has materially increased: for the original networks 1, 2 and 4 was 64.6 Mbit/s ⁽⁵⁷⁾, while for the three transitional networks 11, 12 and 13 it increased to 99.6 Mbit/s and for the three final networks 21, 22 and 24 to 103.6 Mbit/s.

2.3.2. Beneficiaries

- (53) The beneficiaries are the three DTT operators which were required to set up and operate transitional networks during the simulcast period for the migration to DVB-T2 in the context of the release of the 700 MHz band. Those operators held rights of use of frequencies for parallel broadcasting in the 700 MHz band going beyond 2020. The beneficiaries are *Česká televize* (transitional network 11), CRa (transitional network 12), and DB (transitional network 13).
- (54) The fourth DTT operator holding frequency rights in the 470-790 MHz band, CDG (existing network 3), was not required to set up a transitional network and was thus not entitled to receive compensation. Network 3 content was broadcasted over transitional network 12, operated by CRa, during the migration. CDG belongs to the CRa company group.

2.3.3. Form of the aid, budget and duration

- (55) Aid will take the form of direct grants.
- (56) The Radiocommunications account administered by the CTO will finance the measure. The CTO is the national regulatory authority for electronic communications. The Radiocommunication account (see recital (40)) is financed by fees paid by the holders of rights of use of frequencies. The amount of the fees is determined by the Government in a regulation. The CTO, as the administrator of the Radiocommunication account, will reimburse the eligible costs to the beneficiaries.
- (57) The measure covers costs incurred in the period from 1 March 2017 to 18 March 2020 and from 1 July 2020 to 31 October 2020. Costs must have been incurred by the date of switch-off of the DVB-T networks.
- (58) The beneficiaries must submit their request for compensation within 6 months from the entry into force of the Digital Amendment (recital (46)). In application of Section 27 of the ECA, the CTO is in charge of reviewing aid applications under the measure. The CTO is responsible for assessing the accuracy of incurred costs.
- (59) The three beneficiaries have submitted their applications, and the CTO has completed its audit. The final budget of the aid after CTO's audit is CZK 473 391 429 (approx. EUR 18 million), which correspond to CZK [0 - 500 000 000] (*) (approx. EUR [0 - 20] million) for *Česká televize*, CZK [0 - 250 000 000] (approx. EUR [0 - 10] million) for CRa and CZK [0 - 250 000 000] (approx. EUR [0 - 10] million) for DB.
- (60) Czechia committed to pay the aid only after the notification of a Commission decision approving the notified measure.

⁽⁵⁷⁾ The capacity used amounted to 61.6 Mbit/s.

(*) Confidential information.

2.3.4. Eligible costs

- (61) The notified measure aims to compensate costs incurred for the operation of the transitional networks during the simulcast phase from 1 March 2017 to 18 March 2020 and from 1 July 2020 to 31 October 2020 ⁽⁵⁸⁾. The measure does not cover costs incurred after the end of the transitional period, as amended (i.e. 31 October 2020).
- (62) Eligible costs, in the relevant period, are costs incurred in the operation of the transitional networks during the simulcast period for each transmitter: (i) capital expenditure (CAPEX) via amortisation costs related to the new equipment for the purposes of constructing and operating the transitional networks, and (ii) the direct incremental operating costs (OPEX) of the three transitional networks ⁽⁵⁹⁾:
- (1) As concerns the eligible capital expenditure (CAPEX), the costs for the following items are eligible: (a) transmitters, converters, antenna power supplies, related installation and installation material; (b) multiplexors, data distribution networks, related installation and installation material; (c) head-end (including costs related to HEVC); (d) cooling and its installation; (e) measuring equipment; (f) GPS receivers, uninterruptible power supply ⁽⁶⁰⁾.
 - (2) As concerns the eligible OPEX, the following cost items are eligible: (a) electrical energy; (b) wages and salaries for equipment maintenance and/or repairs; and (c) transmission routes (in case they were rented), uninterruptible power supply (if rented), adjustment of electrical connections by building owner.
- (63) CAPEX costs correspond to the amortisation of the assets during the relevant period. Czechia explained that the amortisation reflects the economic useful life of the assets. Czechia indicated that, according to the accounting records of operators ⁽⁶¹⁾, the lifespan and thus the duration of the depreciation varies between 3 and 10 years, depending on the specific asset ⁽⁶²⁾.
- (64) Czechia explained that the investments covered by the notified measure for the purpose of the construction and operation of transitional networks would be reused in part for the final networks ⁽⁶³⁾.
- (65) As indicated in recital (10), the notified measure does not cover either costs for adapting the frequency-related equipment (covered by Decision in case SA.55742), or the costs incurred between 19 March and 30 June 2020 as well as the extraordinary costs that are related to the postponement of the switch-off end date incurred between 1 July and 31 October 2020 (covered by Decision in case SA.60062).

⁽⁵⁸⁾ Each individual transmitters did not simulcast over the whole period from 1 March 2017 to 18 March 2020 and from 1 July 2020 to 31 October 2020. The simulcast duration for each DTT transmitter depends on the actual duration of simulcast phase for each transmitter, as established in the Technical Transitional Plan.

⁽⁵⁹⁾ CRA has eligible CAPEX and OPEX respectively amounting to CZK [...] ([50 – 100] %) and CZK [...] ([0 – 50] %), out of the total of CZK [0 – 250 000 000]. DB has eligible CAPEX and OPEX respectively amounting to CZK [...] ([30 – 80] %) and CZK [...] ([20 – 70] %), out of the total of CZK [0 – 250 000 000]. The eligible costs corresponding to *Česká televize* are based on invoices paid to the company that outsources its network, therefore they are not dissociated in CAPEX and OPEX.

⁽⁶⁰⁾ Uninterruptible power supply (UPS) corresponds to a backup power supply based on battery systems. It is an electrical apparatus that provides emergency power when the input power source or mains power fails.

⁽⁶¹⁾ Czechia indicated that the lifespan in accounting records should reflect the reality, according to the Czech law (Act N°563/1991 Coll. on accounting).

⁽⁶²⁾ These durations are the following. Transmitters: [below 10] years. Converters: [below 10] years. Antenna power supplies: [below 10] years. Multiplexors: [below 10] years, depending on the element. Head-end: [below 10] years for coders and racks; [below 10] years for switches and servers. Cooling equipment: [5 – 15] years. Measuring equipment: [below 10] years. GPS receivers: [below 10] years. UPS: [5 – 15] years.

⁽⁶³⁾ Part of the equipment would be taken up in totality in the final networks. This concerns mainly transmitters and measurement equipment. Some equipment would be reused in the final networks only to a limited extent, like combiners. It would be used to simplify the logistics and to organise the retuning of the final networks. Some equipment would remain installed, even if in principle it would not be needed in case no transitional period would have occurred. It concerns the transmitting antenna systems, cooling and power connections. Some equipment would remain unused, like GPS receivers. This is explained by the fact that SFNs topologies in transitional and final networks configurations are different (they do not need the same number of receivers).

- (66) According to Czechia, the aid would represent approx. 47 % of the total investment and operating costs for setting up the three transitional networks ⁽⁶⁴⁾. Czechia preliminarily estimated that the total investment costs would amount to CZK 1 007 476 444 (approx. EUR 39 million) ⁽⁶⁵⁾.

2.3.5. Cumulation

- (67) Czechia confirmed that the aid under the notified measure cannot be cumulated with any other measure financing the same eligible costs.
- (68) Czechia confirmed that the aid beneficiaries would not be able to apply for depreciation for fiscal purposes of assets that are subject to compensation under the measure.

2.3.6. Transparency

- (69) The Czech authorities committed to publish the text of the measure as well as the information related to the beneficiaries of any aid that exceeds EUR 500 000.

2.4. The complaints

- (70) In 2016 and 2018, the Commission registered two complaints from two entities, ČASO and Telly, providing broadcasting transmission services on satellite and internet platforms or representing such providers (see recital (1)).
- (71) ČASO's initial complaint informed the Commission about alleged illegal and incompatible aid measures in the form of support for the upgrade of the existing DVB-T broadcasting platforms to the DVB-T2 standard involving several measures stemming from the 2016 Strategy. Those include the notified measure, as well as other aspects, such as the information campaign, project management services, etc. ČASO considered that the State support would grant a competitive advantage to the DTT infrastructure operators (CRa and DB) and potentially an indirect one to TV operators (broadcasters) using the DTT platform.
- (72) Telly also complained about several aid measures stemming in particular from the Digital Amendment. The complaint included the notified measure.
- (73) The complainants considered that the measure would grant a discriminatory and unfair competitive advantage to DTT operators, which would receive State support for the upgrade of their platforms/networks while the complainants, as competitors, had to pay themselves for technological upgrades and the related simulcast/parallel broadcasting ⁽⁶⁶⁾ and consequently, also suffered from an erosion of their customer base. They argued that, while the measure purportedly aims at supporting transitional networks, it actually finances the rollout and operation of the final DVB-T2 networks. They argued that the measure risks reinforcing the market imbalance (i.e. high penetration of DTT), in contradiction with the principle of technological neutrality.
- (74) The complainants' observations received before the Opening Decision are summarised in recitals (51)-(55) of the Opening Decision.
- (75) The present decision only addresses the aspects of the complaints related to the notified measure.

⁽⁶⁴⁾ It should be recalled that the measure only seeks compensation for the proportional amortisation of investment costs (recital (65)), while operating costs are covered in their entirety. Total investment costs of setting up the transitional networks were higher.

⁽⁶⁵⁾ Costs including overhead costs and WACC, the remaining depreciation after the end of the simulcast phase is over and other joint costs, but excluding costs compensated under other Commission decisions.

⁽⁶⁶⁾ DIGI s.r.o./Telly indicated that it undertook a transition from DVB-S/MPEG-2 broadcasting format to DVB-S2/MPEG-4 in 2015 and 2016. It explained that one of the significant operating costs were linked to simulcast costs incurred as a result of parallel broadcasting in DVB-S and DVB-S2 standards from October 2015 until September 2016. Capital expenditure covered primarily purchases of new DVB-S2/MPEG-4 compatible customer premises equipment. A member of ČASO explained that it upgraded its broadcasting from DVB-S/MPEG-2 to DVB-S2/MPEG-4 between 2012-2016. It incurred transition costs, notably for satellite capacity for simulcasted content.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

3.1. Existence of aid

- (76) In the Opening Decision, the Commission considered that the measure preliminarily constituted State aid for DTT operators, as it is financed from public resources (the Radiocommunications account) and is imputable to the State (since it is provided in legislative and administrative measures). The beneficiaries are undertakings carrying out terrestrial broadcasting transmission services, which constitutes an economic activity.
- (77) The measure provides for an economic advantage to certain DTT operators as it intends to compensate costs that arise from compliance with regulatory obligations, namely from the Digital Amendment and the Technical Transition Plan, which are inherent to the DTT operators' economic activity. Furthermore, following the completion of the migration, the beneficiaries could use upgraded networks, with more capacity and capable of supporting enhanced TV services. Broadcasters do not enjoy an indirect advantage, given that the transition to DVB-T2/HEVC entailed high costs for them (recital (54) of the Opening Decision).
- (78) The Commission considered that the notified measure is selective because it provides compensation that allows DTT operators to fulfil regulatory obligations (upgrade to DVB-T2/HEVC and simulcast) imposed on them by law. Moreover, the measure allowed DTT operators to ensure continuity of their activities. The equipment in the transitional networks has been partly reused in the final networks. By contrast, other broadcasting transmission networks operators, such as those using satellite technologies, are subject to comparable regulatory constraints and have to bear the associated costs of technical upgrades and simulcast periods.
- (79) Finally, the measure threatens to distort competition and affect trade between Member States, given that it strengthens the position of certain DTT operators, which compete with operators using other TV platforms (satellite, cable, IPTV) and are active at international level.

3.2. Lawfulness

- (80) The Commission raised doubts that the measure has been implemented in compliance with Article 108(3) TFEU, noting that the legal basis may not include a proper standstill clause. The beneficiaries have already filed their applications, which have been examined by the public authorities. At the same time, the Commission noted that Czechia confirmed that no aid was to be paid out before the notification of the Commission decision approving the measure.

3.3. Compatibility

- (81) The Commission verified the compatibility of the measure with the internal market on the basis of Article 107(3)(c), i.e. "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest" may be considered compatible with the internal market", as notified by Czechia.
- (82) The Commission acknowledged that the measure facilitates the development of an economic activity, i.e. the provision of terrestrial broadcasting transmission services.
- (83) The Commission did not identify any elements of the measure that would infringe any provisions or principles of Union law.
- (84) However, the Commission raised doubts that the measure has an incentive effect because there are commercial benefits for DTT operators that could incentivise them to invest on their own initiative (e.g. upgraded networks with increased capacity and quality) in a context where investment predictability had been increased as a result of the extension of spectrum assignments until 2030 and Czechia's ambition to deploy two additional DTT networks could be viewed as an indication of a positive market development.

- (85) The Commission also expressed doubts that the notified measure could have an incentive effect because DTT operators started works for the development of the transitional networks and simulcasting as from March 2017, before the adoption of the Digital Amendment, the Technical Transition Plan and the conclusion of the final agreements on international coordination of frequencies concluded by Czechia with its neighbouring countries. In this context, the 2016 Strategy might not have provided sufficient guidance on the compensation.
- (86) Furthermore, the Commission raised doubts on the necessity of the measure both from the point of view of an existence of a market failure and on the necessity to finance the eligible costs under the EPaC Decision.
- (87) The Commission also raised doubts on the appropriateness of the measure, in particular whether information and certification campaigns would not have been sufficient to incentivise households to change equipment instead of parallel broadcasting, whether financial vouchers to households could have been more appropriate or the imposition of a regulatory obligation could have sufficed in light of the possibility to delay the release of the 700 MHz band on the basis of the derogations foreseen by the EPaC Decision.
- (88) Not last, the Commission raised doubts on the proportionality of the measure in particular on the duration of the parallel broadcasting, on the relevance of certain eligible costs (e.g. CAPEX amortisation) and the parameters to calculate the aid amount, and on whether the accelerated implementation of the DVB-T2 standard would not be outweighed by the commercial benefits in light of the funding needs of the beneficiaries. The Commission also wanted to clarify whether the eligible costs have been compensated by other aid schemes.
- (89) The Commission acknowledged the positive effects of the measure for the development and continuity of DTT economic activities in the context of the release of the 700 MHz band, as well as the important role of media, including TV services, in social cohesion, the functioning of democracies and the economy in general. At the same time, the Commission considered the negative effects that the measure went beyond maintaining the status quo, allowing DTT operators to remain competitive while reducing their investment costs in upgraded equipment, which other operators such as satellite operators have to undertake with private resources.

4. **COMMENTS RECEIVED FROM CZECHIA AND INTERESTED PARTIES DURING THE FORMAL INVESTIGATION**

4.1. **Comments received from Czechia**

- (90) Czechia confirmed its position on various elements previously submitted and provided additional arguments and clarifications. The Czech authorities also concurred with the comments submitted by CRa and described in section 4.3.

4.1.1. *General comments*

- (91) Czechia reaffirmed that DTT is the only FTA platform in Czechia as confirmed by the situation of the TV broadcasting market after the transition to DVB-T2. Czechia confirmed that there is equivalence between the DTT market and FTA services in Czechia. It clarified that the legal framework allows for pay-TV broadcasting on the DTT platform. However, the experiment with the pay-DTT platform (implemented by Skylink/M7 Group) was not successful.
- (92) Czechia referred to the Commission Decision in case SA.55953 concerning the compensation to the Slovak DTT operator for the release of the 700 MHz band ('Decision in case SA.55953')⁽⁶⁷⁾. It indicated that declaring incompatible with the internal market the compensation of the costs associated with modernisation and parallel transmission could lead to unequal treatment between Member States that had to take into account the specific technical and regulatory conditions of their market.

⁽⁶⁷⁾ Commission Decision of in case SA.55953 - Slovakia - Compensation to Towercom for the costs resulting from the release of the 700 MHz band. C(2024) 2577 FINAL. (OJ C 2573, 28.6.2024, p.1).

4.1.2. Breach of EU law

- (93) Czechia strongly disagreed with the complainant's claim of a breach of the principle of technological neutrality. Czechia argued that the EPaC Decision was not itself technologically neutral, as it only affected the DTT platform. In fact, in the absence of the notified measure, the principle of technological neutrality would be seriously violated because only the DTT platform was harmed by the release of the 700 MHz band.
- (94) As none of the alternative platforms have faced a market failure derived from the release of the 700 MHz band, therefore it is normal that their decisions to upgrade technologies have always been determined by market demand. In fact, the competing IPTV platform can benefit from the fact that frequencies from the 700 MHz band became available for IPTV use by mobile network operators currently deploying 5G mobile networks.

4.1.3. Incentive effect

4.1.3.1. On the existence of commercial incentive for DTT operators

- (95) Czechia argued that the situation in the national market for DTT is similar to the one in Slovakia as described in Decision in case SA.55953, where the Commission approved the aid for the technological upgrade of the network in connection to the release of the 700 MHz band⁽⁶⁸⁾. Czechia considered that such case should be used as precedent, following the principles of transparency and non-discrimination.
- (96) In the Decision in case SA.55953, the Commission acknowledged that the decision to release the 700 MHz band by June 2020 is a regulatory measure coordinated at Union level and is therefore not in the hands of the market. Similarly, in Czechia, the DTT operators had no commercial interest in upgrading the DTT standard within the timeframe set by the EPaC Decision. DTT operators could not expect to recover the costs of switching to DVB-T2 because TV broadcasters were not interested in doing so. In the absence of a regulatory change, there was no incentive to make the investments needed to release the 700 MHz band and migrate to the sub-700 MHz band. DTT broadcasting networks did not gain additional revenue as a result of the release of the 700 MHz band but incurred additional costs.
- (97) Czechia recalled that the natural investment cycle for the electronic communications sector is generally considered to be in the range from 12 to 15 years, that the existing commercial contracts between DTT operators and broadcasters were generally set for the period of validity of the respective rights to use the radio spectrum (i.e. until 2021-2024), and that the renewal cycle of TV sets in households in Czechia⁽⁶⁹⁾, point to a natural transition to DVB-T2 technology as from 2022-2024.
- (98) It further explained that prior to the EPaC Decision, it was generally assumed (both by public authorities and operators) that the transition to the new technologies would take place in the period 2022-2024 together with the launch of 1-2 additional DVB-T2 broadcast networks. In fact, Czechia adopted the 2016 Strategy on the basis of the ongoing discussions in connection with the forthcoming release of the 700 MHz band.
- (99) Czechia argued that the fact that the procedure was adopted by consensus between the government and the affected DTT operators does not remove the incentive effect of the measure. On the contrary, the incentive effect is evidenced by the start of the construction of the transition networks and the start of the information campaign by the affected entities before the approval of the relevant legislative steps.
- (100) The Czech authorities disagreed with the argument that experimental tests of DVB-T2 technology in 2012 point to a lack of incentive effect of the measure. Operators normally invest in the verification of new technologies, but this does not mean that they will deploy the entire network on that basis in particular before the full amortisation of the technologies already in use.

⁽⁶⁸⁾ See recital (64) of the Decision in case SA.55953.

⁽⁶⁹⁾ In Czechia, this was in the range of 8-12 years in the period after the end of the analogue-to-digital switchover (i.e. 2012).

- (101) The market shares figures by platform show that after the transition (i.e. in 2023) the DTT platform share has slightly declined to 52.9% from close to 60% before the transition. The combined market share of cable and IPTV has significantly increased to 42.1%, while the market share of satellite TV is in decline since 2013 reaching 19.7%.
- (102) On the other hand, the DTT market in Czechia is relatively stable. Contracts between DTT network operators and FTA broadcasters are negotiated on the basis of expected revenues generated in the TV advertising market, which are stable in Czechia. Czechia confirmed that DTT operators obtain the overwhelming majority (close to 100 %) of their income from the transmission services provided to FTA broadcasters. The revenues of DTT operators are linked to the number of channels, as well as to the quality and possible regionalisation (the possibility of which has been limited by the set-up of large SFNs after the transition to the DVB-T2 standard).
- (103) The major risk in the period of the planned transition from DVB-T to DVB-T2 was the uncertainty of maintaining the same viewership. The use of transitional networks would not increase DTT audience but would only mitigate possible disruptions. Broadcasters' concerns of loss of audience linked to the transition logically had to be reflected in the negotiations with DTT network operators, decreasing revenues for DTT operators after the transition. Further, spare capacity in DTT networks after the upgrade meant that DTT operators had to reduce the price for signal distribution in order to attract or retain broadcasters. Therefore, there was a fall in prices and an increase in competition on the market.
- (104) Czechia provided figures on the number of TV channels broadcasted by DTT commercial operators, which show that both the CRa group (CRa and CDG) and DB have increased the number of TV channels being transmitted⁽⁷⁰⁾. Czechia submitted information from CRa explaining that the remuneration paid by FTA broadcasters to DTT operators ultimately depends on the TV advertising market, thus it is based on the TV audience rather than on the number of TV channels being transmitted.
- (105) Consequently, despite the increase in the number of TV channels being broadcasted, the evolution of the DTT market confirmed that DTT commercial operators could not derive a commercial benefit from the transition, as claimed by the Commission in recital (149) of the Opening Decision. Revenues of DTT operators have in fact declined after the transition. DTT operators faced significant investment costs and services for the transitional networks were not charged to broadcasters. DTT operators have also shown a gradual decline in EBITDA for the period from 2018 onwards.
- (106) Czechia provided figures showing that the revenue derived by DTT commercial operators (CRa, CDG and DB) from TV signal distribution in the DTT platform fell from 2017 to 2020, remaining relatively stable afterwards until 2023⁽⁷¹⁾. According to Czechia, this shows that the transition has not actually led to commercial benefits for the DTT operators, but rather to a decrease in revenues. Further, the figures of the profitability of DTT commercial operators (the CRa group and DB) before and after the transition showed that the profitability of the CRa group has slightly varied since 2017, generally remaining above the 2017's level⁽⁷²⁾. As regards DB, the profitability decreased as compared to 2017 but remained at around [0 – 50]% in 2023⁽⁷³⁾.

⁽⁷⁰⁾ CRa/CDG have increased from 14 TV channels in 2017 to 20 TV channels in 2020 and 23 TV channels in 2023 (broadcasted in networks 2 and 3). DB has also increased the number of TV channels, from 2017 (9 national TV channels, 7 regional channels) to 2020 (15 national channels, 9 regional channels), to 2023 (13 national TV channels, 13 regional channels).

⁽⁷¹⁾ The revenues of CRa/CDG (specifically those revenues derived from TV signal distribution services) slightly increased from CZK [0 – 1,500] million in the fiscal year ending March 2017, to CZK [0 – 1,500] million in the fiscal year ending March 2020, CZK [0 – 1,500] million in the fiscal year ending March 2021, and then declined by around [0 – 50] % to CZK [0 – 1,500] million by March 2022, CZK [0 – 1,500] million by March 2023 and CZK [0 – 1,500] by March 2024. The revenues (turnover) of DB oscillated within the range CZK [0 – 500] million in the period 2016-2023.

⁽⁷²⁾ The profitability of CRa group was CZK [0 – 1,500] / [0 – 1,000] million in 2017 (EBITDA / EBIT) and CZK [0 – 1,500] / [0 – 1,000] million in 2023. It should nevertheless be noted that Czechia provided the profitability of CRa at group level only, which includes other activities in which the group is involved.

⁽⁷³⁾ The profitability of DB was CZK [0 – 200] / [0 – 200] million in 2017 (EBITDA / EBIT) and had decreased to CZK [0 – 100] / [0 – 100] million in 2023. The profit margin (EBIT / turnover) was [0 – 50]% in 2017 and had decreased to [0 – 50]% in 2023.

- (107) Moreover, DB took over the frequency allocation in January 2012 and its original DVB-T network (multiplex 4) had been completed shortly before the start of the transition to DVB-T2 (its first transmitter in DVB-T2 started in November 2017). For this reason, the investment in DVB-T technology was not written off in accounting or technological terms. DB accepted the transition to DVB-T2 in order to maintain its position on the market and to minimise losses.

4.1.3.2. On the start of the works before the adoption of the formal acts granting the aid

- (108) Czechia clarified that the DTT operators actively planned ahead of the release of the 700 MHz band. In the period 2013-2016, the DTT operators started cooperation with manufacturers of receiving equipment (certification laboratory, definition of the procedure and promotion of the certification of TV receivers). Further, they were involved in seminar and discussions with the companies that provided maintenance services for TV antennas. Thus, DTT operators have invested in the process before March 2017, even if those costs are not subject to compensation.

4.1.4. *Necessity*

4.1.4.1. On the necessity to finance the eligible costs under the EPaC Decision

- (109) Czechia considered the eligible costs of the compensation to be direct costs as they are directly related to the implementation of the release of the 700 MHz and have been recognised as such in similar cases at Union level. The transitional networks, DVB-T2 technology and the HEVC compression standards were necessary for a smooth transition, optimising the spectrum and maintaining the availability of services for viewers. Compensation for these investments is justified as it is based on the objective need to ensure continuity of broadcasting and to comply with European harmonisation objectives.
- (110) Czechia considered that the technological upgrade was a prerequisite for a smooth transition in the national circumstances, even if support schemes designed by other Member States may not have included a technological upgrade.
- (111) As regards the need for a technological upgrade:
- (1) all DTT operators were using frequency allocations in the 700 MHz band affected by the EPaC Decision. A simple release would not have been possible without severe disruption of TV broadcasting in Czechia. In this situation, it was necessary to perform a complex re-farming of the DTT networks in the remaining spectrum in the sub-700 MHz band.
 - (2) However, in the national circumstances, it was not possible to release the 700 MHz band using a re-farming without a technological upgrade to more spectrum-efficient technologies for reasons of international coordination of frequencies (for around 30% of the frequencies) or the re-farming would have led to a substantial loss of TV signal availability. Czechia examined the possibility of a direct re-farming (without upgrade) in the preparation of the 2016 Strategy, concluding that it would not have been possible to keep 4 networks with 98% coverage without disruptions⁽⁷⁴⁾. DTT operators would have failed to fulfil their obligations included in the contracts with broadcasters. This would have harmed the DTT platform to the benefit of alternative platforms. In addition, keeping DVB-T networks would not have been compatible with neighbouring countries (in particular Germany, Austria, Poland).
 - (3) The use of the large SFNs with DVB-T2 was necessary to effectively redistribute the remaining spectrum. Such large SFNs were not possible with DVB-T technology⁽⁷⁵⁾. If large SFNs were operated with the DVB-T standard after the 700 MHz band was released, interference and loss of coverage would occur (see recital (64) of the Opening Decision and table therein).

⁽⁷⁴⁾ Around 40 % of citizens would lose signal for at least 25 % of TV programmes.

⁽⁷⁵⁾ SFNs operating with the DVB-T broadcasting standard can generally only serve small areas, no larger than 67 km. In contrast, SFNs operating with the DVB-T2 transmission standard can serve larger areas, reaching 134 km. Therefore, in order to cover the whole country without interference.

- (4) The technological upgrade to DVB-T2 was recommended in the EPaC Decision.
- (5) Czechia emphasized several aspects that result from the ADL study carried out by Arthur D. Little. The decision to release of the 700 MHz was not technologically neutral and it distorted a functional market damaging DTT operators and households. The notified measure secures the financing of the premature transition to DVB-T2 and partly replaces the sunk costs invested in DVB-T technology, which were spent within the expected investment cycle at least until the end of the valid allocations (2021-2024), alleviating the disadvantages caused to DTT operators.
- (6) The absence of large SFNs in network 4 is due to the regionalisation of the network (enabling regional TV content). Nevertheless, despite not using large SFNs, network 4 still obtains technical benefits from the upgrade to DVB-T2 like increased capacity and improved functioning. Furthermore, not upgrading network 4 would have put that network at a disadvantage, when other networks had been upgraded.
- (7) The upgrade to HEVC compression was also necessary to ensure sufficient capacity to broadcast programmes of the required quality, while maintaining the availability of public service broadcasts and commercial content. An alternative solution, such as sticking to older compression standards (e.g. AVC/H.264), would have led to the need to limit the number of programmes available or to reduce their quality. The transition to DVB-T2 was inevitable for reasons of spectral efficiency and this standard is commonly implemented in European countries together with HEVC. HEVC is a modern standard that meets the current requirements for digital broadcasting and its deployment was in line with long-term technological trends.

(112) As regards the need for transitional networks:

- (1) These networks were necessary to avoid disruptions, to incentivise households to replace their reception equipment and to get familiarised with DVB-T2 broadcasts. The simulcast accelerated the replacement of receiving receivers to an average of 4 years ⁽⁶⁾ (from a normal replacement cycle of 6 years or more). The certification process ⁽⁷⁾ of receivers (without any compensation) was also essential for the successful transition. Certified devices were sold with a sticker which was also part of the information campaigns. Simulcasting in HD format by *Česká televize* also incentivised the purchase of compatible receivers.
- (2) A socially insensitive transition would have had a negative impact on DTT broadcasting. Without the measure, simulcast would have taken place under more restrictive conditions (for certain regions and for a limited time).
- (3) Once the 700 MHz band has been released, it would not have been possible to design a transition to DVB-T2 using transitional networks for a simulcast period due to the reduced spectrum availability.

4.1.4.2. On the existence of a market failure

- (113) Czechia indicated that compensation was necessary in particular since the upgrade as a consequence of the release of the 700 MHz band came after the previous release of the 800 MHz band (i.e. completed in 2012), which also involved costs for the DTT operators.

⁽⁶⁾ Czechia provided information on the increase of TV sales in particular as from 2017. The estimation of the share of households equipped with DVB-T2/HEVC receivers increased from 13% in 2016, to 28% in 2017, 49% in 2018, 77% in 2019 and 100% in 2020. It should be taken into account that the transitional networks were deployed progressively: from only one network with 60% coverage in 2017, to 3 networks with aggregated coverage of 238% already in 2018.

⁽⁷⁾ This process was carried out by CRA (certification laboratory) and retailers based on the CTO-issued and upgraded D-Book CZ (compatible with the similar German D-Book).

- (114) DTT operators were not ready to invest in 2020 on their own initiative. The updated ADL study on the market failure for DTT broadcasting derived from the release of the 700 MHz band already estimated the investment cycle of DTT operators to last until 2024, documenting negative impacts for viewers and DTT operators resulting from the release of the 700 MHz band in 2020 and presenting the measure (a controlled transition) as the solution to incentivise DTT operators for the necessary investments.
- (115) Czechia documented the strong opposition of broadcasters to finance the transition ⁽⁷⁸⁾.

4.1.5. *Appropriateness*

4.1.5.1. On whether the information/certification campaign could have been sufficient

- (116) Czechia insisted that the data on the increase in sales of compatible receiving equipment is relevant to demonstrate the reasonableness of the length of the parallel broadcasting. Czechia repeated that increased sales and widespread acceptance of the equipment is a substantial indicator of the appropriateness of the parallel broadcasting.
- (117) Czechia clarified that the information campaign related to the beginning of the switch-off of the existing DVB-T networks was not launched until October 2019. However, other parts of the information campaign were already launched following the adoption of the 2016 Strategy in mid-2016, gradually building up using various media and on TV, for example covering the information on certification, on the procedure, and regional information.

4.1.5.2. On the possibility of using financial vouchers to households

- (118) Czechia indicated that sufficient factual evidence has been provided, including cost calculations of financial vouchers to households, clearly showing that the measure was more beneficial to the State and households than other options. In addition to the cost of financial vouchers themselves, there are also distribution costs and setting the necessary legislation that would delay the process by 1-2 years.
- (119) As regards the technological neutrality of vouchers, Czechia expressed doubts that a technology neutral measure which has positive effects on competing platforms should be adopted to mitigate the negative effects of the release of the 700 MHz band by DTT operators. This would further amplify the market failure.

4.1.5.3. On the possibility of delaying the release of the 700 MHz

- (120) Czechia explained that the possibility under the EPaC Decision of delaying the release of the 700 MHz band for two years was given in practice only to countries bordering non-EU countries. Czechia rejected this possibility since compliance and harmonisation with neighbouring states (especially those with the longest neighbouring border) was feasible and possible in the given timeframe.

4.1.6. *Proportionality*

4.1.6.1. On the duration of the simulcast

- (121) Czechia recalled that the main aim of a sufficiently long simulcast period was to take into account the needs of households. The compensation corresponds to the actual costs incurred in the operation of the transitional networks and was not established to give a market advantage to DTT operators, but as a necessary response to regulatory requirements. The timing of the transition has been set to minimise the impact on users and the compensation reflects the real costs of the DTT operators, irrespective of the length of the rights of use.

⁽⁷⁸⁾ Joint statement of television associations on the future use of the UHF band in the Czech Republic (17 September 2015).

- (122) Czechia explained that a sufficiently long transition period significantly reduced the number of households that would be forced to invest in a new receiver outside the natural renewal cycle, reducing any additional burden on households derived from the release of the 700 MHz band. Czechia primarily based the simulcast on the real needs of its citizens for the replacement of receiving equipment and the capacity of the retail market to supply the equipment. It was necessary to stimulate the replacement of receivers ahead of the natural replacement cycle.
- (123) It was also necessary to take into account aspects such as weather (e.g. replacement of transmitting antenna systems is not practical in winter) and the capacity of support companies (a significantly reduced simulcast would not have allowed time to service the antenna equipment in households) ⁽⁷⁹⁾. In addition, ensuring the practical verification, construction and operation of large SFNs was also taken into consideration for the duration of the simulcast period ⁽⁸⁰⁾.
- (124) A shorter period could have led to technical and economic problems, especially in regions with slower renewal of receiving equipment. The advantages (quality, availability, further increase in the number of available channels etc.) of the new technology (DVB-T2/HEVC) had to be clearly demonstrated to households over a longer period of time.
- (125) Czechia indicated that the use of transitional networks allowed for a seamless transition to DVB-T2 networks for all TV stations, which could not be achieved by a direct switchover, i.e. in a short period of 3-4 months, as assumed by the complainants. The total duration of the simulcast period is not accurately described to be 3 ½ years, since that is the total duration of the transition and not the effective simulcast period per transmitter. For example, the average length of simulcast for network 1 was 19 months ⁽⁸¹⁾.
- (126) The reference to the period of 6 months during the analogue-to-digital switchover, which the CTO considered to be unnecessary long ⁽⁸²⁾, is specific to that situation. The analogue-to-digital switchover (2008-2012 in Czechia) was accepted by the market as a major innovative step bringing significant added value, unlike the mandated release of the 700 MHz band.
- (127) Czechia recalled that simulcast had been limited to the necessary time to achieve a socially acceptable migration and that DTT operators did not realise any revenue from the transitional networks.
- (128) Czechia is convinced that the question of the length of simulcasting in the two standards falls entirely within the national competence and is an exclusive decision of the national authorities. This approach reflects not only the technical and economic aspects of the transition to the new broadcasting standard, but also the social dimension of the process. Czechia believes that the negative effects on competition and trade are limited and that the positive effects clearly outweigh them.

4.1.6.2. On the relevance of certain eligible costs

- (129) The compensation reflects the real costs incurred to ensure the smooth release of the 700 MHz band and cannot be considered excessive. The measure has been designed to minimise market distortions and ensure the continuity of terrestrial television broadcasting. DTT operators are not the primary beneficiaries of the investment but rather have borne the main costs associated with the transition, and therefore the compensation is justified.

⁽⁷⁹⁾ From the information provided, it appears that it was necessary to modify some antennas for better reception (i.e. on the roofs of family houses and common TV antennas for apartment buildings).

⁽⁸⁰⁾ It was necessary to verify and fine-tune the operation of the transition networks to operate them in compliance with the law. This involved, among other things, verifying procedures to eliminate problems such as SFN echo/pre-echo in some specific areas or interference problems (DVB-T2 vs. 4G LTE). Setting up and operating networks in the new standard was technically demanding, involved solving a number of problems and eliminating a large number of difficulties with a direct impact on end user. For example, in the period from September 2019 to December 2020, one of the DTT network operators recorded 8,773 complaints about signal reception in the DVB-T2 standard.

⁽⁸¹⁾ This is the planned length in the Technical Transition Plan, which was subsequently modified by the need for COVID measures, which are not subject to compensation under the notified measure.

⁽⁸²⁾ Available here: https://www.ctu.cz/cs/download/digitalni_vysilani/prubezna_zprava_tpp_06-2010.pdf.

- (130) Czechia disagreed with the argument that the level of support does not take into account the timing of the switchover to DVB-T2/HEVC in the framework of the rights of use. The argument that the aid should have been differentiated according to the remaining duration of the licences does not take into account the fact that these operators had to make the switchover within a given timeframe regardless of the remaining period of their rights of use. Moreover, the extension of the rights to use the frequencies until 2030 does not alter the fact that the investments in new technologies were forced by regulatory requirements and necessary for the continuity of broadcasting.
- (131) In any event, Czechia clarified that the prolongation of rights of use until 2030 was not conditional on the transition and technological upgrade. The implemented extension of the allocations until 2030 was not compensatory, but rather restrictive with regard to the legal framework, since in the absence of the release of the 700 MHz, DTT operators would have had the right to request the extension until 2030 (even keeping the DVB-T standard).
- (132) Czechia also disagreed that the relevance of the parameters for calculating the amount of aid to compensate for the costs of investment in DVB-T2/HEVC networks has not been justified. The use of monthly depreciation of tangible assets is a standard method which ensures a gradual phasing of the actual investment costs and is in line with accounting principles; it allows to accurately determine the economic value of the investments over time and to ensure that the aid corresponds to the actual costs incurred.
- (133) As regards the suitability of depreciation/amortisation to estimate CAPEX costs of the transitional networks, Czechia confirmed that the depreciation period is based on the useful life⁽⁸³⁾ of the relevant equipment according to the accounts of the relevant operator (beneficiary). According to the Czech legislation on accounting⁽⁸⁴⁾, the useful life used for accounting purposes must correspond to the reality. Therefore, depreciation prevents overvaluation of the CAPEX costs relating to the relevant assets. In addition, depreciation reflects the reduction of the value of an asset in case it will be re-used in the final networks (e.g. if an asset with a useful life of 5 years has been used for 2 years in the transitional networks, it will only have 3 remaining years of lifespan in the final networks).

4.1.6.3. On whether the accelerated implementation of the DVB-T2 standard would not be outweighed by the commercial benefits

- (134) Czechia explained that the counterfactual scenario of slower adoption of DVB-T2 never existed in a detailed outline at the time of the forced switchover derived from the EPaC Decision. Given the long-time horizon for the market renewal of the technology, the operators had not developed any alternative market renewal scenario at the time of the measure. Czechia submitted a business plan of 2010⁽⁸⁵⁾ of one of the beneficiaries for a DVB-T network, but provided no business plans contemporary to the measure. Nevertheless, Czechia referenced the updated ADL study, an expert study commissioned by the Ministry of Industry and Trade, which analysed several scenarios: (i) upgrade to DVB-T2 with parallel broadcasting, (ii) upgrade to DVB-T2 without parallel broadcasting, and (iii) keeping DVB-T leading to a coverage reduction⁽⁸⁶⁾. The study provided a qualitative and quantitative assessment of the costs for the different stakeholders (i.e. DTT operators, TV broadcasters, households and the State). According to Czechia, the quantified costs according to the ex-ante analysis clearly showed that a simultaneous switchover is the best option to keep the impact of the measure to the minimum necessary, considering all stakeholders.

⁽⁸³⁾ Typically: transmitters and converters ([below 10] years), GPS receivers ([below 10] years), antenna power supplies ([below 10] years), cooling equipment ([7 – 15] years), UPS ([7 – 15] years), monitoring equipment ([below 10] years), distribution ([below 10] years), head-end coders and racks ([below 10] years), head-end switches and servers ([below 10] years).

⁽⁸⁴⁾ Act No. 563/1991 Coll., on accounting.

⁽⁸⁵⁾ A presentation to the board of directors of CRa dated 21 July 2010 containing a valuation/business case from September 2010 to December 2023.

⁽⁸⁶⁾ The Czech authorities considered the possibility of a scenario of market-led adoption of DVB-T2 in the preliminary assessment of the transition scenarios, but the scenario of market-led adoption did not feature in the final study as it could not offer an appropriate solution in the situation of Czechia.

4.1.6.4. On whether the eligible costs have been compensated by other aid schemes

- (135) As regards the absence of cumulation with other aid measures, Czechia confirmed that the detailed verification of the eligible costs was made by CTO to ensure that only relevant costs were included and that there are no costs which have already been subject to compensation on the basis of any other aid measure. Czechia emphasized that all the relevant costs are recorded in the accounting of each beneficiary and that the sum of all costs compensated to each beneficiary according to measures approved by the Commission cannot be higher than the total of the relevant costs in the accounting of each beneficiary. The CTO carried out a detailed verification of the eligible costs, excluding any costs that had been subject to compensation on the basis of another aid scheme. Czechia finds the complainants' allegation that CTO's experts are biased to be irrelevant and baseless. CTO conducts its audits according to the legal framework (Section 27(5) of the ECA).

4.1.7. *Positive effects*

- (136) Czechia disagreed with the Telly's claim that the measure produced limited positive effects (recital (153)). The complainant neglected the fact that the distribution of television signals on the DTT platform is based on a different economic model compared to alternative platforms (satellite, IPTV, cable). In the case of DTT, the dominant model is FTA services, where the costs of transmission of TV signal are paid by broadcasters to DTT network operators, remaining free for viewers. For the alternative platforms, viewers pay both for the transmission of the signal and for the TV content.
- (137) Czechia explained that the positive effects of the transition to DVB-T2/HEVC have translated into better-equipped households in terms of receiving equipment, which has also benefited other competing platforms.

4.1.8. *Negative effects*

- (138) The release of the 700 MHz band happened relatively quickly after the release of the 800 MHz by DTT operators (completed in 2012). Since 2012, Czechia submitted that there has been a healthy competition between the different platforms in the TV content market. However, the release of the 700 MHz band only affected DTT operators, which incurred the associated costs and suffered a deterioration of their competitive situation to the benefit of competing platforms.
- (139) It recalled that any potential harm as a result of an uncontrolled release of the 700 MHz band suffered by the DTT platform, which is cost-free for households, could have impacted households, should they be pushed to move to alternative platforms if DTT coverage was degraded.
- (140) Czechia fundamentally disagreed with the claim that it favoured the least progressive platform, harming competing platforms and with detrimental effects to the public interest. The selection of technologies was only based on the suggestion of EPaC Decision, while respecting compatibility with neighbouring countries. On the contrary, evidence shows that the interest in broadband is increasing thanks to the transition to DVB-T2/HEVC and the use of HBBTV options. DTT has started to realistically act as an entry point into broadband usage.

4.1.9. *Cumulation*

- (141) Czechia confirmed that the compensation granted under the notified measure to the three DTT operators cannot be cumulated with any other measure financing the same eligible costs.

4.2. **Comments received from the complainants**

4.2.1. *General comments*

- (142) Telly recalled the comments that it provided before the adoption of the Opening Decision where it had explained that the Commission should apply in this case the same assessment criteria as in its decision in case SA.28599 concerning DTT in Spain ⁽⁸⁷⁾.

⁽⁸⁷⁾ Commission Decision C(2021) 4048 final of 10 June 2021 in State aid SA.28599 (C 23/2010) (ex NN 36/2010, ex CP 163/2009)) implemented by Spain for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha) (OJ L 417, 23.11.2021, p.1).

- (143) Telly indicated that it had access to Czechia's observations to the Opening Decision under the national rules for free access to information. The complainant considered that Czechia's observations were brief and did not provide any new information or evidence, in contrast with the requirement that the Member State bears the burden of proving the compatibility of the measure with the internal market.

4.2.2. *Breach of EU law*

- (144) Telly disagreed with the Commission's conclusion that it has not identified any infringement of provisions or principles of EU law (recital (116) of the Opening Decision). In particular, the complainant considered that the measure contravenes the principle of equal treatment⁽⁸⁸⁾ and the principle of technological neutrality which in its opinion is at the heart of Commission practice in State aid, as also confirmed by the EU Courts⁽⁸⁹⁾. Telly is not aware of any Member State that would have even theoretically considered providing support to DTT operators for the technology upgrade or parallel broadcasting.

4.2.3. *Incentive effect*

- (145) Telly considered that Czechia's submission that DTT operators had invested in the transition to DVB-T2/HEVC even before 1 March 2017 (recital (108)), further confirms that the measure had no incentive effect as it shows that operators were ready to invest well before the adoption of the Technical Transition Plan. The fact that any costs incurred before the start of the transitional networks were not subject to any compensation is irrelevant.

4.2.4. *Necessity*

- (146) Telly agreed that the political decision to release the 700 MHz band is the result of EU regulatory measures, however it considers that that alone is not indicative of a market failure. Telly agreed with the doubts expressed by the Commission in the Opening Decision and indicated that no explanation has been given why DTT operators would not be willing to continue the activity without State support.
- (147) As regards the need to set up transitional networks, the complainant considered that there would be no substantial interference, as other Member States clearly managed to release the 700 MHz band without any such negative externalities. The complainant recalled that other technological platforms had to bear their own costs related to upgrades and simulcast. Telly considered that households would not have lost access to DTT broadcasting if the release of the 700 MHz band had been done reasonably, like in other Member States.

4.2.5. *Appropriateness*

- (148) The complainant is convinced that the measure is also not appropriate as there were more efficient and less intrusive alternatives. The complainant considers that direct support to households would be much less distortive, less costly and technologically neutral. This solution worked well in other Member States⁽⁹⁰⁾. The complainant did not understand how the measure helped to address the alleged negative attitude of households towards losing access to the DTT platform in the absence of a managed transition.

⁽⁸⁸⁾ See judgment of 17 February 2021 in case T-238/20, Ryanair DAC v Commission, EU:T:2021:91, para. 29; or in judgment of 15 April 2008 in case C-390/06, Nuova Agricast, EU:C:2008:224, paras. 50 and 51.

⁽⁸⁹⁾ See for instance the judgment of 26 November 2015 in case T-461/13, Spain v Commission, EU:T:2015:891, p. 18, 56.

⁽⁹⁰⁾ See Commission decision of 19.07.2017 in case SA.48386 (2017/N) – France Fonds d'accompagnement de la réception télévisuelle. (OJ C 307, 15.09.2017). See Commission decision of 12.04.2019 in case SA.51079 Audiovisual broadcasting reception aid for multi-households buildings (TRTEL). (OJ C 194, 07.06.2019).

- (149) As regards Czechia's argument that the distribution of vouchers entails distribution costs, the complainant referred to the possibility of using the universal postal services provided by Czech Post. As regards Czechia's argument that it would take at least 2 years to adopt legislation for vouchers, the complainant compared that period to the 3 ½ year duration of the parallel broadcasting.
- (150) As regards the argument that a certification campaign may have been more appropriate than a lengthy parallel broadcasting, according to the complainant, Czechia kicked off the formal nation-wide information campaign only in October 2019, i.e., more than two years after starting the parallel broadcasting on 1 March 2017. It adds that the declaration that the information campaign was launched in mid-2016 and gradually building since then is not supported by evidence.

4.2.6. *Proportionality*

- (151) Telly considered that Czechia provided no new explanations for the duration of the simulcast beyond 3-4 months (or even 6 months), but merely disputes the Opening Decision by pointing to the increase of sales of receiving equipment. The complainant also disagreed with the arguments that the analogue-to-digital switchover could not be used as a comparable situation to determine a reasonable duration of the simulcast period during the technological upgrade to DVB-T2/HEVC.
- (152) Telly considered that Czechia provided no new evidence or justification as to whether the measure is truly limited to compensating costs that have not been already covered by other measures. Czechia makes this statement without providing any evidence that CTO carried out a detailed verification of the eligible costs for each beneficiary. The complainant invoked CTO's possible biases, suggesting that independent experts would be more appropriate. It further suggested that the audit alone of those eligible costs does not address the Commission's doubts.

4.2.7. *Positive effects*

- (153) Telly agreed that a well-functioning media landscape and media pluralism are important for functioning democracies and economies. However, the positive effects of the measure are limited in nature. In particular, it considers that Czechia's argument that the DTT platform is the only FTA platform for TV broadcasting in Czechia is false as there is neither legal regulation nor any contractual guarantee preventing commercial broadcasters from encrypting their programmes after the transition to the DVB-T2 standard.

4.2.8. *Negative effects*

- (154) The complainant argued that Czechia decided to favour the least progressive TV technology (i.e. DTT), which would not only harm competing technologies but would ultimately have a negative effect on customers. Telly recalled that it was ready to roll out a free-to-view DIGI TV card under the legitimate expectation of a technologically neutral state information campaign. Telly recalled that the two biggest commercial broadcasters in Czechia (which have a combined audience share of nearly 60%) have repeatedly announced their intention to encrypt HD versions of their programmes once the DVB-T2 standard was implemented.

4.3. **Comments received from beneficiaries**

- (155) The Commission received comments from CRa and DB, two of the beneficiaries of the measure (recital (5)). Save where explicitly indicated in this section, the comments come from CRa.

4.3.1. General comments

- (156) As regards the scope of the measure, CRa indicated that the Opening Decision gives the impression that the compensation concerns investment costs in new equipment necessary for the construction and operation of the DVB-T2/HEVC networks (see recitals (3)(i) and (28)(i) of the Opening Decision). However, the measure precisely concerns the incremental costs of the three transitional networks, which were operated for a limited time and for free. In particular, the measure only compensates for the depreciation of equipment used for the transitional networks. In this respect, the fact that some equipment could be re-used in the final networks is irrelevant.
- (157) According to CRa, the measure aims at (a) ensuring a smooth and timely release of the 700 MHz band, which would not be possible without a consensus with the DTT operators, (b) ensuring viability of the DTT networks at least until 2030, as envisaged in the EPaC Decision, and (c) preserving the status quo between technological platforms for TV broadcasting, thereby preventing distortions of competition.
- (158) CRa explained that the DTT platform is indisputably the strongest TV broadcasting platform in Czechia, and there is an obvious correspondence between DTT and FTA services in Czechia. There is no pay-TV offer in the DTT broadcasting platform and there is no FTA offer available over satellite, cable or IPTV, not even within a part of the Czech territory. In recital (106) of the Opening Decision, the Commission referred to the possibility of a launch of a pay-DTT service of Skylink/M7 Group, however that information is outdated ⁽⁹¹⁾.
- (159) CRa considered that the assessment of the measure must be consistent with the assessment of other measures related to the release of the 700 MHz band that have already been approved by the Commission.

4.3.2. Existence of aid

4.3.2.1. Imputability

- (160) CRa argued that the measure is not imputable to the State, given that the release of the 700 MHz band and the transition to DVB-T2 directly implement a legislative act enacted by the Union (i.e. the EPaC Decision). The EPaC Decision envisages that the Member States may provide compensation in order to facilitate transition to more spectrum-efficient technologies. The measure merely ensures that Czechia meets the goals imposed by the EPaC Decision.

4.3.2.2. Selective advantage

- (161) CRa considered that there is no selective advantage given that the measure only mitigates the adverse effects on the DTT platform resulting from the enforced process of the releasing the 700 MHz band and the related transition to DVB-T2. The measure simply compensates DTT operators for a structural disadvantage. It affects all DTT operators in the same manner.
- (162) CRa recalled that the Court of Justice has ruled that a law which merely prevents an undertaking's budget being burdened with a charge which, in a normal situation, would not have existed, does not confer an advantage on that undertaking ⁽⁹²⁾. Given the circumstances of the case at hand, where Union regulations gradually reduce the amount of the spectrum reserved for DTT services, well before the DTT investment cycle and without respecting the validity of the related rights of use, it is appropriate to treat the costs related to the implementation of those measures as an abnormal burden borne by the budget of an undertaking. These are neither normal regulatory costs nor costs related to the day-to-day management of an undertaking's normal activities. The Court of Justice concluded that normal costs to be borne by an undertaking are those that are borne by all competitors ⁽⁹³⁾.

⁽⁹¹⁾ Skylink's pay-DTT service failed, the number of subscribers was only ever in the hundreds and the company decided to discontinue pilot broadcasting as of 30 June 2022.

⁽⁹²⁾ Judgment of 23 March 2006, *Enirisorse SpA v Sotacarbo SpA*, C-237/04, EU:C:2006:197, para 48.

⁽⁹³⁾ Judgment of 14 July 2016, *Germany v Commission*, T-143/12, EU:T:2016:406, para 132.

- (163) CRa indicated that the statement in recital (79) of the Opening Decision that the Czech authorities were able to unilaterally release radio frequencies from the 700 MHz band from DTT operators by amending their assignments of radio frequencies pursuant to Section 19 of the ECA, is an oversimplification. CRa considered that the EPaC Decision is not directly applicable – it is not binding on the DTT operators but addressed to Member States. Thus, even though the ECA includes provisions for a possible amendment of frequency assignments in order to comply with EU law, the use of this legal basis was not considered viable.
- (164) CRa argued that it is undisputed that it was indispensable for the Czech authorities to reach consensus with the DTT operators in order to effectively and timely vacate the 700 MHz band, otherwise it would have exposed itself to the risk of long-term disputes and/or international arbitrations. Moreover, if the state had invoked Section 19 of the ECA, there was an imminent risk of facing damage claims on the grounds of a *de facto* expropriation of the relevant radio frequencies ⁽⁹⁴⁾.
- (165) CRA pointed out that the transitional networks were operated on a free of charge and non-profit basis, established in order to ensure a public policy objective, the only possible remuneration for DTT operators being the compensation under the measure. During the extensive consultation around the release of the 700 MHz band, all TV broadcasters clearly refused to bear any costs, especially any simulcast costs.
- (166) CRa argued that it cannot be assumed that there is an advantage for the DTT providers either. Its revenues have dropped after the release of the 700 MHz band and related transition to DVB-T2, regardless of any increase of data capacity as a result of the transition to DVB-T2 indicated in recital (27) of the Opening Decision.
- (167) As regards selectivity, CRa insisted that the Commission must explain why undertakings using DTT should be regarded as being in a factual and legal situation comparable to that of undertakings using other technologies ⁽⁹⁵⁾, which were not directly concerned and/or negatively affected by the process of release of the 700 MHz band. The general regulatory requirements imposed on other platforms (e.g. satellite) are not comparable to the specific situation related to the release of the 700 MHz band. The business models of the different platforms are diametrically different ⁽⁹⁶⁾. The DTT platform does not directly compete with other technology platforms, DTT relates to FTA TV, whereas other platforms offer pay-TV services. This is in line with Commission decisions in merger cases where the Commission tends to delineate a separate distribution market for FTA services and that for pay-TV services, on account of their different business models ⁽⁹⁷⁾.
- (168) With reference to recital (88) of the Opening Decision, CRa indicated that the measure targets all operators of DTT networks. There were only three transitional networks because there was no spectrum available for a fourth transitional network ⁽⁹⁸⁾. CRa therefore agreed with CTO that CDG, its subsidiary, would not build its own transitional network, but would use the transitional network 12 operated by CRA.

⁽⁹⁴⁾ The updated ADL study estimated that, without the consensus, DTT operators could claim an amount of approx. CZK 5 448 – 6 494 million as the loss of profit. See updated ADL study, page 77.

⁽⁹⁵⁾ Judgment of 20 December 2017, *Comunidad Autónoma de Galicia, Redes de Telecomunicación Galegas Retegal SA (Retegal) v Commission*, C-70/16 P, EU: C:2017:1002, para 61.

⁽⁹⁶⁾ Broadcasters pay to DTT operators for the distribution of TV broadcasting. In all other platforms, broadcasters are selling their content packaged into channels to TV retailers (distributors), which aggregate TV channels into packages and offer them to end users (viewers). TV distributors pay transmission fees to broadcasters. However, DTT operators are selling capacity of their networks to broadcasters. DTT broadcasting entails material distribution cost for TV broadcasters and they do not receive any corresponding transmission fees. FTA TV broadcasters derive their revenues from advertising.

⁽⁹⁷⁾ See for instance Commission Decision of 21 December 2011 in case M.6369 - HBO/Ziggo/HBO Netherland, paragraph 28; or Commission Decision of 21 December 2010 in case M.5932 - News Corp/BskyB, paragraph 99.

⁽⁹⁸⁾ According to the 2006 Geneva Plan, Czechia has a total of six layers. Since only four DVB-T networks were in use in Czechia at the time, it was possible to set up three transitional networks using the frequencies from the remaining two layers and temporarily coordinating with neighbouring countries.

4.3.2.3. Distortion of competition

- (169) As regards the existence of distortion of competition, CRa argued that such distortion would have to improve the competitive position of the recipient compared to other undertakings with which it competes. However, the notified measure is intended to compensate the recipients for the additional incremental costs incurred due to the state-imposed regulatory changes. Furthermore, as already explained, CRa believes that DTT operators do not compete with operators of other platforms.

4.3.3. Breach of EU law

- (170) CRa did not consider that the measure can breach the principle of equal treatment, since it is available to all DTT operators in the Czech Republic in an equal, transparent and non-discriminatory manner, i.e. it targets all economic operators that are in a comparable factual and legal situation.

4.3.4. Lawfulness

- (171) CRa indicated that the moment of granting of the aid is when there is an unconditional and legally binding right to receive the aid ⁽⁹⁹⁾. Even though the aid beneficiaries have already submitted their applications for the compensation of costs to the CTO, it is clear that the CTO will withhold payment until the Commission completed its evaluation. The grant of the compensations was always conditional upon its clearance by the Commission.
- (172) CRa explained that the provision of Section 27(5) of the ECA as amended by the Digital Amendment did not provide any details on the eligible costs and the amount of compensation, therefore the granting of the aid was subject to an assessment by CTO.
- (173) CRa explained that the provisions of Section 27(5) of ECA were apparently incorporated into Digital Amendment in order to create a procedural framework for public authorities to respect the standstill obligation of Article 108 (3) of the TFEU. This obligation is similarly formulated, for example, in the Postal Services Act ⁽¹⁰⁰⁾. According to the established decision-making practice of the national courts, when deciding to suspend an administrative proceeding pending the resolution of a preliminary issue by another authority, the administrative authority must take into account the circumstances of the relevant proceeding. The fact that the compensations to be decided by the administrative authority are subject to a procedure before the Commission on their compatibility with Article 107 of the TFEU is undoubtedly an important circumstance to be taken into account by the administrative authority. Premature payment of the compensation could result in an obligation to recover the aid in the event of a negative decision of the Commission. The provision of Article 108(3) of the TFEU, which prohibits the granting of aid before a Commission decision, is directly applicable and the administrative authority therefore had no choice but to suspend the procedure and await the Commission's decision, which it did.
- (174) In addition, compensation measures were not to be granted automatically under the Digital Amendment, but subject to the assessment of the CTO, which is directly bound by Article 108 (3) of the TFEU. As the Commission itself acknowledges in recital (44) of the Opening Decision, the Czech Republic plans to pay the aid only after the measure has been approved by the Commission.
- (175) CRa explained that, for the avoidance of any doubt, the relevant provision of the ECA was subsequently amended by Act No.374/2021 Coll. of 15 September 2021, effective from 1 January 2022 ⁽¹⁰¹⁾.

⁽⁹⁹⁾ See for instance the judgment of 25 January 2018, Brussels South Charleroi Airport (BSCA) v Commission, T-818/14, EU:T:2018:33, para 72.

⁽¹⁰⁰⁾ Section 34a(3) of the Postal Services Act, Act No 29/2000 Coll. of 18 January 2000.

⁽¹⁰¹⁾ The current wording of the ECA (specifically Section 122(6) thereof) explicitly provides for what was previously implied by interpretation - namely, that the administrative authority must suspend the proceedings: "Where proceedings are pending before the Commission in respect of State aid in matters under this Act, such proceedings shall be deemed to be preliminary proceedings under the Administrative Procedure Code. The Authority shall not grant aid or transfer funds until the Commission has ruled on the eligibility of the aid."

- (176) Lastly, CRa argued that the Commission did not challenge the lawfulness of State aid in the case of costs in other measures related to the release of the 700 MHz band (e.g. Decision in case SA.55742), which rely on the same legal acts as the notified measure.

4.3.5. *Incentive effect*

4.3.5.1. On the existence of commercial incentive for DTT operators

- (177) CRa argued that the DTT operators did not have a market incentive to vacate the 700 MHz band as required under the EPaC Decision. Czechia needed to reach consensus with DTT operators by adopting a bundle of compensatory measures to offset the structural disadvantage brought about by the EPaC Decision to DTT operators.
- (178) CRa argued that the release of the 700 MHz band by June 2020 was in contradiction with the natural investment cycles for DTT (generally 12-15 years and the investments related to the analogue-to-digital switchover were completed in 2012), with the existing commercial contracts between DTT operators and TV broadcasters, and with the cycle of renewal of TV receivers in households.
- (179) CRa indicated that even though the data capacity of the networks has increased as a result of the transition to DVB-T2, CRA has not been able to sell the entire capacity of the new networks and its revenues even dropped following the transition. The fact that the networks were used at full capacity was, on its own, not a sufficient driver for the technology update ⁽¹⁰²⁾.
- (180) The fact that CRA (through its subsidiary CDG) financed the DVB-T2 upgrade of network 3 (now final network 23), cannot be used as evidence for a lack of incentive effect. As previously explained, CRA agreed with CTO that CDG would not build its own transitional network in view of the insufficient spectrum available to operate a fourth transitional network, but would rely on transitional network 12 instead.
- (181) CRa indicated that experimental broadcasting of DVB-T2 by CRA in 2012, as stated in recital (124)(a) of the Opening Decision, cannot be used to deny the incentive effect of the measure. Experimental broadcasting of new technologies is usually carried out many years before a commercial decision is taken and long before their actual implementation (e.g. Czechia launched the experimental broadcasting that ran on DVB-T already in 1999, whereas the actual transition to DTT was completed only in 2012). CRA explained that the experimental broadcasting carried out in 2012 was solely for the purpose of verification of the technical parameters and on the basis of short-term individual authorisations issued by the CTO.
- (182) Similarly, the fact that CRA mentioned in its 2011 annual report that DVB-T2 could help develop their business did not mean that CRA intended to implement it. In addition, the report did not set any specific timeframe. CRA confirmed that, prior to the adoption of the 2016 Strategy and the EPaC Decision, CRA's business plan did not foresee the transition to DVB-T2 immediately in view of the validity of the original radio frequency allocations, which extended beyond 2020. In addition, the 2016 Strategy already noted the strong opposition of broadcasters to finance the migration.
- (183) CRa considered that the Opening Decision is inconsistent when it raised doubts on the incentive effect of the measure because beneficiaries started to invest before the Digital Amendment was adopted. If the compensation was not sufficiently certain at the time of the investments, the Commission cannot claim at the same time that the beneficiaries could have relied on the prolongation of the rights to use spectrum until 2030 and should have

⁽¹⁰²⁾ In fact, another, cheaper solution was available. If CRA wanted to transmit more channels in its DVB-T networks, it could have used the MPEG-4 codec instead of the MPEG-2 codec. Compared to the transition of DVB-T2, the upgrade from MPEG-2 to MPEG-4 compression technology without the need of replacing DVB-T transmitters is a low-cost solution that would increase capacity of CRA's DVB-T networks by roughly [50 - 100]%. Yet CRA did not choose this strategy, because it did not see business potential in increasing the capacity.

reflected this fact in their business plan. Nor can the Commission claim that operators could have relied on the necessary frequencies for the transitional networks which, despite the promise in the 2016 Strategy, had not yet been allocated to DTT operators. On the contrary, all these measures form a single package of measures described in the 2016 Strategy, which were notified together by Czechia.

4.3.5.2. On the start of the works before the adoption of the formal acts granting the aid

- (184) CRa also noted that the Commission accepted the incentive effect of other measures related to the release of the 700 MHz band, such as in the Decision in case SA.55742, measures which rely on the same legal basis. CRa considered that the assessment of the incentive effect should be based on the judgment of the General Court in *Graphischer Maschinenbau* ⁽¹⁰³⁾, according to which, when assessing the incentive effect, account must be taken of the wider context in which the eligible costs were incurred, including the communications from the national authorities.
- (185) CRa explained that it received assurances related to the compensation mechanism from the Czech authorities already before March 2017. The decision of the DTT operators to take steps leading to the release of the 700 MHz band (including investments to transitional networks) was in the first instance based on several years of public discussions which started already in 2013 ⁽¹⁰⁴⁾. The main documents in Czechia concerning the release of the 700 MHz band (e.g. the 2016 Strategy) were extensively discussed with the market, including with CRa, before their actual adoption. CRa actively participated in the expert group set up by the Czech Ministry of Industry and Trade that worked on the 2016 Strategy.
- (186) CRa believes that the 2016 Strategy is a key document which provided sufficient assurance to DTT operators. The 2016 Strategy imposed an obligation on the Ministry of Industry and Trade to proceed together with the Ministry of Culture and the CTO in accordance with the 2016 Strategy, including to secure the realisation of the compensatory measures described in the 2016 Strategy, subject to the Commission approval.
- (187) CRa indicated that already in 2016, the CTO had issued two individual frequency authorisations to CRa (out of 26 individual frequency authorisations for the transmitters and approx. 50 individual frequency authorisations for the gap fillers which were used subsequently) in order to fulfil the Strategy and to enable CRa to start building transitional network 12.

4.3.6. Necessity

4.3.6.1. On the necessity to finance the eligible costs under the EPaC Decision

- (188) In the 2016 Strategy, Czechia had already determined that “the transition is not feasible without a certain period of simultaneous operation of existing DVB-T and DVB-T2 Transition Networks and the use of the 700 MHz Band for DTT. The generally shared consensus is therefore that the Transition to DVB-T2, i.e. to the more spectrally efficient DVB-T2/HEVC technology, must take place first, and then only the 700 MHz Band can be released if necessary. If not, there could be a dramatic drop in availability (signal coverage of the population) and quality of DTT, and thus of public service broadcasting, which would most likely eventually lead to the demise of DTT as such.” ⁽¹⁰⁵⁾.

⁽¹⁰³⁾ See judgment of 14 May 2002 in case T-126/99, *Graphischer Maschinenbau v Commission*, EU:T:2002:116, paragraph 44: “[...] in order to assess whether the element of inducement was present the Commission ought to have taken into account the precise form and nature of the communications and acts emanating from the competent national authorities, together with the other pertinent factors [...]”.

⁽¹⁰⁴⁾ Official reports and opinions prepared for the Commission (e.g. Lamy Report) and the debates over the 2014/2015 period reveal the Commission's clear intention to accelerate the release of the 700 MHz band and, thus, to accelerate the practical application of key technology trends aimed at more spectrum-efficient standards and technologies – DVB-T2, SFN and HEVC. As of WRC-2015, it was clear that the 700 MHz band will be released.

⁽¹⁰⁵⁾ Page 17 of the 2016 Strategy.

- (189) The 2016 Strategy also determined that the duration of the simulcast “must primarily respect the need to achieve sufficient equipment of households with new television receivers or set-top boxes (STBs) compatible with DVB-T2/HEVC broadcasting based on their availability on the market”, the replacement cycle of equipment estimated at least at 5-6 years ⁽¹⁰⁶⁾. Taking into account at least 3 years of simulcast, the 2016 Strategy estimated that the replacement cycle could be reduced to a period of 4-5 years ⁽¹⁰⁷⁾.
- (190) CRa explained that transitional networks were necessary for technical reasons, in particular the need for international coordination and avoidance of interference, as well as to allow time for equipping households with new receivers and switching to the new frequencies.
- (191) Both CRa and DB considered that without the transition to DVB-T2, it would not have been possible to free up the 700 MHz band. The creation of large SFNs enabled by DVB-T2 was crucially important ⁽¹⁰⁸⁾. The HEVC standard was selected as the most efficient technology available at the time for video and audio compression, helping with the efficient use of radio spectrum and protecting consumer investment in compatible TV sets ⁽¹⁰⁹⁾.
- (192) According to CRa, the transition to DVB-T2 was a pre-condition for the release of the 700 MHz band. Allegedly this position would have been widely supported by the opinions of various advisory bodies of the Commission drawn up prior to WRC-15, in particular the Lamy Report ⁽¹¹⁰⁾ and the RSPG opinion ⁽¹¹¹⁾. Furthermore, the EPaC Decision stipulates in its recital (20) that “[...] Where Member States intend to maintain DTT, the national roadmaps should consider the option of facilitating upgrades of broadcasting equipment to more spectrum-efficient technologies, such as advanced video formats (e.g. HEVC) or signal transmission technologies (e.g. DVB-T2).”. After extensive discussions and expert studies (e.g. ADL Study), Czechia decided to make use of the aforementioned option to adopt more spectrum-efficient technologies and to carry out the transition to DVB-T2.
- (193) CRa considered that simply replacing the radio frequencies of the 700 MHz band along without the upgrade to DVB-T2, while respecting neighbouring countries’ requirements in the context of international frequency coordination, would lead to a substantial limitation on the terrestrial broadcasting, which would affect approx. 60 % of the population of Czechia ⁽¹¹²⁾. In practice, this would mean that of the six nationwide networks de facto guaranteed by the 2006 Geneva international agreement, only three fully usable DVB-T networks would remain available. DB insisted that the need to maintain the four existing nationwide networks in the context of the release of the 700 MHz band required the use of large SFNs using DVB-T2 standard, as their operation was not feasible with DVB-T. CRa observed that keeping the DVB-T standard would also limit further technological development and thus the use of HD TV programs. The choice of DVB-T2 was also compatible with the standard chosen by neighbouring countries (Germany, Austria).

⁽¹⁰⁶⁾ Page 19 of the 2016 Strategy.

⁽¹⁰⁷⁾ Page 28 of the 2016 Strategy.

⁽¹⁰⁸⁾ Standard DVB-T supports shorter guard intervals, this makes it impossible to operate this standard with SFNs in such a large scale. Implementing technology DVB-T2 was necessary to improve guard interval size and enlarge maximum SFN size. For example, in the case of the network 1, 10 unique frequencies were used to cover Czechia with DVB-T, only 3 frequencies were sufficient with DVB-T2.

⁽¹⁰⁹⁾ The complainants’ argument that the MPEG-4 codec should have been used is unreasonable. The older type of MPEG-4 compression was published in 1999.

⁽¹¹⁰⁾ Lamy report.

⁽¹¹¹⁾ RSPG Opinion on a long-term strategy on the future use of the UHF band (470 – 790 MHz) in the EU of February 19, 2015.

⁽¹¹²⁾ According to CRa, a simple direct refarming would restrict the availability of TV signal in the Czech Republic for a part of TV programmes for a significant part of the population (about 40 % of citizens would lose signal for at least 25 % of TV programmes). DTT operators would have failed to comply with obligations under their commercial contracts entered into with TV broadcasters, leaving part of the audience to alternative platforms. Any uncontrolled release of the 700 MHz band would result in a completely fundamental and unilateral damage to the DTT platform.

- (194) In CRa's view, the operation of the transitional networks also allowed for technical continuity of broadcasting, as DTT network operators had more time to test and check the proper operation of the new networks. A longer transition period was also important for households to replace their TV sets in a natural way ⁽¹¹³⁾. For DB, not having used parallel broadcasting could have led to loss of DTT services for about half of the Czech households. Massive demand of new receivers and change of platform at one single point in time could destabilize the market.
- (195) CRa stressed that the eligible costs for the operation of the transitional networks are incremental costs incurred by DTT operators that are necessary for the release of the 700 MHz band. CRa further pointed out that the amount of compensation is largely independent of the choice of technology standards (DVB-T and DVB-T2 technology, also MPEG2/MPEG4/HEVC technology ⁽¹¹⁴⁾, have similar equipment costs). The eligible costs are caused by the simulcast period, irrespective of the choice of the codec.

4.3.6.2. On the existence of a market failure

- (196) CRa emphasised that DTT operators were not legally obliged to make the switchover to DVB-T2. The DVB-T2 switchover would not even be necessary for them to compete effectively in the market in the absence of the release of the 700 MHz band. Allegedly the legislative framework did not allow the Czech Republic to ensure the release of the 700 MHz band and the transition to DVB-T2 according to the timetable foreseen without the consent and cooperation of DTT network operators. Czechia had to find a compromise solution acceptable to DTT network operators that held affected radio frequency allocations, otherwise exposing itself to the risk of long-term litigation and international arbitration.
- (197) According to CRa, the release of the 700 MHz band significantly accelerated the migration to DVB-T2, as it limited the available spectrum for DTT broadcasting. Neighbouring countries also linked this release to the transition to a higher and more frequency-efficient broadcasting standard. This further increased the risk of interference had Czechia not switched to DVB-T2.

4.3.7. Appropriateness

- (198) CRa considered that the alternative solutions proposed by the Commission in the Opening Decision (i.e. certification, information campaigns or direct support to households for the purchase of DVB-T2 compatible equipment) were less appropriate than the use of transitional networks.

4.3.7.1. On whether the information/certification campaign could have been sufficient

- (199) An information campaign was carried out but was mainly financed directly by the DTT operators ⁽¹¹⁵⁾. Czechia financed the information campaign to a minimal extent. Certification of TV receivers to ensure full compatibility with DVB-T2 standard, which was also funded by the CRa, started in Czechia in 2016. The combination of these private sector activities, along with state-supported construction and operation of transitional networks, ensured the smooth release of the 700 MHz band while maintaining DTT broadcasting, which is the only FTA broadcasting available.
- (200) According to CRa, the simulcast was appropriate because it significantly and substantially minimised negative social impacts and secured TV continuity. Transitional networks also motivated importers of consumer electronics to import DVB-T2 and HEVC TVs and set-top boxes.

⁽¹¹³⁾ DTT broadcasts (FTA services) are mainly received by low-income households, slower to replace their TV sets.

⁽¹¹⁴⁾ CRA provided information on the price policy of one supplier and indicated that the [...].

⁽¹¹⁵⁾ It shall be noted that no compensation is provided to CRa regarding the costs of the information campaign which it financed, as those costs are not the subject of the notified measure.

4.3.7.2. On the possibility of using financial vouchers to households

- (201) Direct subsidies to households would have represented a significantly more expensive solution, as compensation would have to be paid on a non-discriminatory basis to a large number of households. CRa emphasized that direct subsidies to households (e.g. vouchers) would have been a more costly solution (approx. EUR 83 million) ⁽¹¹⁶⁾, several times higher than the compensation under the notified measure (around EUR 18 million). If vouchers were only provided to low socioeconomic households, the amount (approx. EUR 37 million) ⁽¹¹⁷⁾ would still be significantly above the compensation under the measure. In addition, Czechia benefited from VAT revenues associated with the increased sale of new TV sets and set-top boxes.
- (202) CRa also considered that direct subsidies to households would have a negative effect on competition in the TV broadcasting market. For example, a technologically neutral voucher could trigger some households leaving the DTT platform to another platform (e.g. satellite or IPTV) where transmission involves an additional cost for the household, thereby increasing total costs for households.

4.3.8. Proportionality

4.3.8.1. On the duration of the simulcast

- (203) CRa observed that the simulcast period stipulated in the transition was longer than only six months – e.g. the average length of the simulcast on transmitters forming part of MUX1 was 19.5 months. The length of the simulcast cannot be compared to Germany, where only approx. 6% of the population was using DTT compared to approx. 60% of the population in Czechia.
- (204) According to CRa, the duration of the simulcast period was based on the Technical Plan for the transition to DVB-T2 prepared by the CTO together with the Ministry of Industry and Trade, subsequently approved by the Government of Czechia in the 2016 Strategy. The length was duly discussed and considered in order to reflect the technical considerations, international coordination and to provide the necessary comfort regarding to households, while reducing risks derived from the migration ⁽¹¹⁸⁾. The robustness of the chosen approach was proven right in the COVID-19 crisis, when the migration was temporarily interrupted without significant problems.
- (205) According to CRa, a much more limited timeframe (approximately 3-4 months instead of the proposed 2 - 3 years) could only be based on a purely technical migration involving direct frequency re-farming and not from the need for socially acceptable support and motivation of households to replace their receivers and switch to DVB-T2.

4.3.8.2. On whether the accelerated implementation of the DVB-T2 standard would not be outweighed by the commercial benefits

- (206) CRa indicated that, unlike in the analogue-to-digital switchover, the current process is not driven by market trends and an upgrade to better technology. In CRa's view, the upgrade to DVB-T2 was premature. At the time of the release of 700 MHz band, households and broadcasters were not keen to obtain an enhanced product.

⁽¹¹⁶⁾ Assuming an amount of EUR 50 (the same amount as applied in Italy) for households as a subsidy toward the purchase of receiving equipment, and assuming further that the state subsidy (voucher) would be used by 50% of households (paying the concession fee), the costs would amount to EUR 83 million (excluding distribution costs). The amount of EUR 50 is below the minimum price of a technologically neutral set-top-box and represents around 20% of the price of a standard certified TV set.

⁽¹¹⁷⁾ Voucher for low socioeconomic households could entail EUR 37 million (using the EU estimate of 22% households would fall in that category), without accounting for distribution costs of the vouchers.

⁽¹¹⁸⁾ The length of the 1st phase (2017 to October 2019) was based on: (a) sufficient time to adapt households (receiving equipment, adjusting antenna systems, considering sufficient capacity of service providers and tuning); (b) stimulation of the retail TV set market; (c) practical verification of the construction and operation of large SFN networks. The 2nd phase (November 2019 to June 2020, or in fact, October 2020, due to Covid-19), during which the transmitters of DVB-T networks were gradually switched-off was critically important to ensure the full continuity of broadcasting. This was especially evident during the Covid-19 pandemic.

- (207) CRa considered that the proportionality assessment has to take into account the correct scope of the proposed measure, namely the fact that it is limited to costs related to simulcasting. The costs of the upgrade from DVB-T to DVB-T2/HEVC are to be partially compensated only in relation to the three transitional networks.
- (208) Neither CRa nor the other DTT operators realized any revenues in connection with the simulcast. CRa stressed that the requested compensation only represents around [0 – 50]% of its total costs related to the parallel broadcasting ⁽¹¹⁹⁾.

4.3.8.3. On the relevance of certain parameters to calculate the compensation

- (209) CRa explained that the compensation represents the real costs (OPEX and CAPEX) recorded in the accounting of each beneficiary, actual and incurred during the transitional broadcasting. The compensation is not based on theoretical average monthly costs. These average monthly costs were used just to estimate the maximum amount of the compensation for the notification purposes only.
- (210) CRa explained that depreciation costs which quantifies CAPEX costs is the real depreciation of each relevant asset used for the broadcasting in the transitional network of each operator. Depreciation is a real cost and the asset usage in the transitional network reduced its remaining useful life, i.e. the time the asset can be used in the final network. Depreciation is an objective manner to quantify CAPEX costs, generally the best practise to quantify a reduction in the value of an asset over time due in particular with regard to wear and tear. Depreciation in accounting records should reflect the reality, according to the Czech law on accounting ⁽¹²⁰⁾ and prevents double counting of the same costs.

4.3.8.4. On whether the eligible costs have been compensated by other aid schemes

- (211) CRa indicated that the measure is limited to compensating costs that have not already been compensated by existing measures, such as the one approved by Commission Decision in case SA. 55742 and Commission Decision in case SA. 60062.

4.3.9. Negative effects

- (212) CRa argued that the release of the 700 MHz band was not driven by a natural technological development of the TV broadcasting market, but by State intervention which limited the spectrum available for the DTT platform. Other broadcasting platforms, in particular satellite, cable and IPTV had significantly lower market share than DTT in Czechia and were pay-TV services. Those platforms can only be a substitute for the DTT platform from a technical point of view. Furthermore, available studies ⁽¹²¹⁾ confirmed that substitution of the DTT platform cannot be expected by other platforms in countries with high DTT penetration.

5. ASSESSMENT OF THE MEASURE

5.1. Existence of aid within the meaning of Article 107(1) TFEU

- (213) The Commission has examined whether the notified measure can be qualified as State aid within the meaning of Article 107(1) TFEU, which provides that “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the internal market*”.

⁽¹¹⁹⁾ CRa indicated that it requested a reimbursement of CZK [0 – 500] million but CTO only accepted CZK [0 – 250] million (conditionally on the notification to the Commission).

⁽¹²⁰⁾ Act N°563/1991 Coll. on accounting.

⁽¹²¹⁾ E.g. A Long Term Vision For Terrestrial Broadcasting, 11/2015, DVB Project.

- (214) In order to qualify a measure as aid within the meaning of Article 107(1) TFEU, the following cumulative conditions must be met: (i) the beneficiaries of the measure must be undertakings, i.e. entities engaged in an economic activity; (ii) the measure must be imputable to the State and financed through State resources; (iii) it must confer an advantage on its recipient; (iv) that advantage must be selective; and (v) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.
- (215) In the Opening Decision, the Commission considered that the measure preliminarily fulfils the criteria set in Article 107(1) TFEU. Czechia did not dispute this finding. However, one of the beneficiaries disputed that the notified measure is imputable to the State, that it grants a selective advantage and that it distorts competition.

5.1.1. *Beneficiaries of individual aid*

- (216) Czechia notified a measure that consist in compensation for the costs of the operation of transitional networks in the context of the release of the 700 MHz band by DTT operators.
- (217) The Digital Amendment established that the beneficiaries are holders of radio frequency allocation for nationwide networks in the DVB-T standard which are entitled to reimbursement of costs effectively and efficiently incurred in the process of transition to the DVB-T2 standard to technically ensure the service of transmission of terrestrial television broadcasting using transitional networks (recital (44)). Therefore, beneficiaries are spectrum holders using the DVB-T standard which incurred in costs for the operation of transitional networks. However, the Digital Amendment does not specify which spectrum holders were required (or even could) operate a transitional network.
- (218) The 2016 Strategy already identified two nationwide transitional networks, labelled A and B, which would be designed to be compatible with respectively the existing network 1 (operated by *Česká televize*) and network 2 (operated by CRa). A third transitional network labelled R, capable of regionalisation, was associated with network 4 (operated by DB) and would be used if allowed by international coordination of frequencies (recital (32)). The Technical Transition Plan established the detailed conditions in which the transitional networks were required to be operated, determining the transmitters, dates and technical conditions for the parallel broadcasting. According to the Technical Transition Plan, those transitional networks were denominated networks 11, 12 and 13 (recitals (49)-(50)), which would use the transmitters of the existing networks 1, 2 and 4 respectively.
- (219) On the basis of the 2016 Strategy and the Technical Plan, only three providers which had spectrum rights associated with DVB-T standard (out of the four providers holding such rights) were required to operate transitional networks. Those providers that could benefit from the compensation are thus identified by the provisions of the 2016 Strategy, the Digital Amendment and the Technical Transition Plan, as follows:
- (1) One of the beneficiaries, *Česká televize* is the public broadcaster and also holds the spectrum rights associated with DTT network 1 using DVB-T standard, which it operated. It managed the existing network 1, the transitional network 11 (labelled A in the 2016 Strategy) and now manages the final network 21. The operation of *Česká televize*'s network is outsourced to CRa (recital (25)(1)). *Česká televize* submitted an application to receive compensation for the operation of the transitional network 11 to CTO, on the basis of Section 27 of the ECA (recital (59)).
 - (2) Another beneficiary is CRa. CRa held the spectrum rights associated with DTT network 2 using DVB-T standard, which it operated. It managed the existing network 2, the transitional network 12 (labelled B in the 2016 Strategy), which was used to simulcast the content of the existing networks 2 and 3 ⁽¹²²⁾ and now manages the final network 22 (recital (25)(3)). CRa submitted an application to receive compensation for the operation of the transitional network 12 to CTO, on the basis of Section 27 of the ECA (recital (59)).

⁽¹²²⁾ CDG (subsidiary of CRa) held spectrum rights associated with network 3 using DVB-T standard, however it was not required to operate a transitional network, Transitional network 12 operated by CRa took care of the parallel broadcasting of the content of networks 2 and 3.

- (3) The last beneficiary is DB. DB held the spectrum rights associated with DTT network 4 using DVB-T standard, which it operated. It managed the existing network 4, the transitional network 13 (labelled R in the 2016 Strategy) and now manages the final network 24 (recital (25)(4)). DB submitted an application to receive compensation for the operation of the transitional network 13 to CTO, on the basis of Section 27 of the ECA (recital (59)).
- (220) Based on the above, it is first appropriate to determine if the notified measure constitutes an aid scheme or an individual measure. For a State measure to be classified as an aid scheme within the meaning of the first limb of Article 1(d) of Regulation 2015/1589 ⁽¹²³⁾, three cumulative conditions must be satisfied. First, aid may be granted individually to undertakings on the basis of an act. Second, no further implementing measure is to be required for that aid to be granted. Third, undertakings to which individual aid may be granted must be defined 'in a general and abstract manner' ⁽¹²⁴⁾.
- (221) The notified measure is granted on the basis of three acts, i.e. the 2016 Strategy, the Digital Amendment and the Technical Transition Plan. The Digital Amendment refers to beneficiaries in a general and abstract manner, i.e. spectrum holders using DVB-T standard which incurred in costs for the operation of transitional networks (recital (217)). Nevertheless, it is not possible to grant the aid solely on the basis of this act, since it does not determine which transitional networks must be built and operated, the technical requirements for the release of the 700 Mhz band and for the migration of the DTT services. In this regard, the 2016 Strategy already envisages three transitional networks which are associated to the three beneficiaries, while the Technical Transition Plan confirms which (three) specific transitional networks have to be established, i.e. networks 11, 12 and 13, and establishes the technical conditions for the operation of these networks, including the start and end date. Those transitional networks were to be built on the basis of the same transmitters operated in the existing networks 1, 2 and 4, respectively. Therefore, it results from the joint reading of the 2016 Strategy, the Digital Amendment and the Technical Transition Plan which are the (three) individual beneficiaries of the compensation for the operation of the transitional networks.
- (222) Therefore, the Commission considers that the notified measure consists in three individual aid measures. The beneficiaries of the individual aids are *Česká televize*, CRa and DB.

5.1.2. *Economic activity*

- (223) The case-law has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ⁽¹²⁵⁾. The classification of a particular entity as an undertaking thus depends entirely on the nature of its activities. According to the jurisprudence, any activity consisting in offering goods and services on a market is an economic activity ⁽¹²⁶⁾.
- (224) In the present case, the aid is granted to operators carrying out broadcasting transmission services. DTT operators provide terrestrial TV broadcasting transmission services to broadcasters. In their activity as DTT operators, the main source of revenue of CRa and DB is the remuneration paid by broadcasters for those services (recital (102)). As regards *Česká televize*, the public broadcaster, it provides the service of terrestrial TV broadcasting transmission for its own broadcasting activities, which also represent an economic activity.

⁽¹²³⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽¹²⁴⁾ Judgment of 16 September 2021, *Commission v Belgium and Magnetrol International*, C-337/19 P, EU:C:2021:741, paragraphs 58 to 60.

⁽¹²⁵⁾ Judgment of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 74; Judgment of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, EU:C:2006:8, paragraph 107.

⁽¹²⁶⁾ See judgment of 16 June 1987, *Commission v Italy*, 118/85, EU:C:1987:283, paragraph 7; judgment of 18 June 1998, *Commission v Italy*, C-35/96, EU:C:1998:303, paragraph 36; judgment of 12 September 2000, *Pavlov and Others*, joined cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 75.

- (225) Therefore, the Commission concludes that the three beneficiaries for which compensation for the operation of transitional networks is sought are undertakings engaged in the economic activity of providing DTT transmission services.

5.1.3. State resources and imputability

- (226) The eligible costs will be compensated from the Radiocommunication account (recital (56)). The Radiocommunication account's resources stem from a portion of the fees paid by holders of rights of use of frequencies to the State for the use of those resources. The measure is financed by public resources and is imputable to the State for the following reasons:

- (1) The Radiocommunications account is laid down and regulated by law (recital (56)).
- (2) The fees paid by the right holders are charged by the national authorities in exchange for the use of spectrum, that constitutes a public resource, and represent revenues of the State.
- (3) The share of the fees that must contribute to the account is decided by the national authorities.
- (4) The CTO opens and administers the Radiocommunication account. The resources within that account are under the control of CTO, that establishes their destination. The CTO must yearly report on the administration of the account.
- (5) The costs and revenues resulting from the deposit of the account are attached to the State budget.
- (6) The measure is provided in the legislative and administrative measures provided in recital ((26)).
- (7) CTO administers the measure by reviewing the aid applications and checking the accuracy of the eligible costs (recital (58)).

- (227) CRa argued that the notified measure is not imputable to the State because it ensures that Czechia meets the goals imposed by the EPaC Decision and directly implements that Decision enacted at EU level (see recital 4.3.2.1). Also, the EPaC Decision would envisage that Member States may provide compensation in order to facilitate transition to more spectrum-efficient technologies.

- (228) However, the Commission observes that the notified measure in the form of compensation to DTT operators is not imposed on Czechia by the EPaC Decision. In particular, while it is true that the EPaC Decision establishes the obligations for Member States (i) to allow the use of 700 MHz band for wireless broadband electronic communications services⁽¹²⁷⁾ and (ii) to ensure availability at least until 2030 of the sub-700 MHz band for the terrestrial provision of broadcasting services⁽¹²⁸⁾, the EPaC Decision does not impose an obligation to Member States to provide compensation to DTT broadcasters. The EPaC Decision recognises the discretion of Member States to decide whether adequate compensation should be provided, in particular for end users⁽¹²⁹⁾. Only when the Member State is under an obligation to implement Union law without any discretion, the measure cannot be considered imputable to that Member State⁽¹³⁰⁾. On the contrary, Article 6 of the EPaC Decision provides a wide discretion to Member States that “*may, where appropriate and in accordance with Union law, ensure that adequate compensation [...]*.” Furthermore, it is also clear that the EPaC Decision does not determine the design of such compensation, be it its circle of beneficiaries, eligible costs or any other conditions. In addition, the EPaC Decision unambiguously states that such compensation may only be provided in accordance with Union law, therefore it does not prejudice the application of State aid rules, which must be observed by Czechia.

⁽¹²⁷⁾ See Article 1 of the EPaC Decision.

⁽¹²⁸⁾ See Article 4 of the EPaC Decision.

⁽¹²⁹⁾ See Article 6 of the EPaC Decision: “*Member States may, where appropriate and in accordance with Union law, ensure that adequate compensation for the direct cost, in particular for end users, of the migration or reallocation of spectrum use is provided promptly and in a transparent manner in order to, inter alia, facilitate transition to more spectrum-efficient technologies. At the request of the Member State concerned, the Commission may provide guidance on such compensation in order to facilitate the transition in spectrum use.*”

⁽¹³⁰⁾ Judgment of the Court of Justice of 23 April 2009, Puffer, C-460/07, EU:C:2009:254, paragraph 70.

- (229) Therefore, the Commission concludes that the measure is imputable to the State and financed through State resources.

5.1.4. *Economic advantage*

- (230) An advantage within the meaning of Article 107(1) TFEU is any economic benefit, which a beneficiary would not have received under normal market conditions, in the absence of State intervention ⁽¹³¹⁾. The advantage may take the form of a positive financial support but also any measure that mitigates the charges, which are normally included in the budget of an undertaking ⁽¹³²⁾. Among the charges that are normally included in the budget of an undertaking are costs of undertakings arising from regulatory measures inherent in the exercise of a regulated economic activity ⁽¹³³⁾.
- (231) In the present case, the aid is granted to operators carrying out terrestrial broadcasting transmission services, which constitutes an economic activity (see section 5.1.2). The measure mitigates charges which are normally included in the budget of an undertaking, for the following reasons. First, the measure intends to compensate costs that arose from regulatory measures, namely the 2016 Strategy, the Digital Amendment and the Technical Transition Plan (recital (26)). The Digital Amendment obliges DTT operators to implement transitional networks (recital (43)) and the 2016 Strategy and the Technical Transition Plan concretely establish which transitional networks are required as well as the dates and detailed conditions for the operation of those transitional networks (recitals (49)-(50)). Regulatory obligations arising from the 2016 Strategy, the Digital Amendment and the Technical Transition Plan are inherent to the DTT operators' economic activity. Prior to the Digital Amendment, Section 19 of the ECA already contemplated the possibility for the CTO to amend (or even to withdraw) the authorisations to use radio frequencies, if needed for Czechia to comply with Union law (recitals (38)-(39)). In the case at hand, the objective of the 2016 Strategy, the Digital Amendment and the Technical Transition Plan was for Czechia to comply with the obligations set out in the EPaC Decision. Second, the possibility of being obliged to free the assigned spectrum or to undergo a modification of the conditions to the rights of use frequencies and of the transmission and compression standards, in the context of international coordination, before expiry of the rights, is not an occurrence that could have been unknown to the right holders, considering precedents (i.e., the release of the 800 MHz band – see recital (13), the European Parliament and Council decided that the 800 MHz band would be allocated to wireless broadband services as of January 2013) and preliminary international discussions (recitals (13)-(14)). Czechia explained that the regulatory intervention falls within the national competence (recital (128)). The regulatory intervention was adopted by different binding legal acts (recital (26)) which included the 2016 Strategy, the amendment (the Digital Amendment) of the regulatory framework for electronic communications in Czechia (the ECA) and a Government Decree laying down the detailed technical conditions for the transition (the Technical Transition Plan). Thus, the Commission considers that the costs covered by the notified measure stem from regulatory interventions by Czechia and are inherent in the exercise of the broadcasting transmission services activities of the DTT operators.
- (232) The Commission does not agree with the observations received from one beneficiary arguing that there is no advantage resulting from the notified measure and that the regulatory costs that the measure aims at compensating are not inherent in that economic activity. The beneficiary submitted that the measure simply compensates DTT operators for a structural disadvantage (recital (161)). However, the Commission notes that, even if the relevant regulatory obligations only affected DTT operators and complying with these obligations may entail costs for the operators, this does not change the fact that the costs arising from such obligations are inherent in the economic activity of the DTT operators that may imply the compliance with regulatory obligations. The Commission will address the selectivity aspect of the beneficiary's argument in the next section (recital (249)).

⁽¹³¹⁾ Judgment of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60; Judgment of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

⁽¹³²⁾ Judgment of 26 April 2018, *Cellnex Telecom SA and Telecom Castilla-La Mancha SA v Commission*, C-91/17 and C-92/17 P, EU:C:2018:284, paragraph 111.

⁽¹³³⁾ Judgment of 30 June 2016, *Belgium v Commission*, C-270/15 P, EU:C:2016:489, paragraphs 35-36.

- (233) The beneficiary also submitted that the *Enirisorse* judgment ⁽¹³⁴⁾ was relevant to assess the situation at hand (recital (162)). However, the Commission notes that the measure in *Enirisorse* did not constitute an advantage because it had the effect of cancelling the effect of a previous measure, the resulting situation going back to the normal conditions, which according to the Court were laid down in the Italian Civil Code. The national measure merely prevented the undertaking's budget from being burdened with a charge which, in a normal situation, would not have existed and did not seek to reduce a charge which that company would normally have had to bear. On the contrary, the normal conditions of operating in the DTT market may include fulfilling regulatory obligations imposed by Czechia and bearing the costs for complying with those obligations, such as operating transitional networks. The normal conditions did not include being compensated for any costs stemming from compliance with regulatory measures, therefore those were not the normal conditions which would have existed and to which the notified measure is returning. In addition, the situation in *Enirisorse* is highly specific, dealing with a dispute between two undertakings concerning the rights of withdrawal of members from public limited companies. In the case at hand, as previously explained, regulatory costs are inherent to the economic activity of providing DTT transmission services. These costs cannot be considered to constitute an abnormal burden borne by the budget of an undertaking meaning that such costs are not inherent to the activity of DTT operators. In fact, DTT operators were already aware that developments in the spectrum policy are possible, given that Section 19 of the ECA even foresaw that possibility and also in view of the previous release of the 800 MHz band which was completed in 2012 in Czechia.
- (234) As regards the argument raised by the beneficiary on the basis of *Germany v Commission* ⁽¹³⁵⁾, that the normal costs to be borne by an undertaking are those borne by all competitors (recital (162)), it should be noted that the General Court made that reference in that specific situation with respect to the existence of a structural disadvantage (i.e. the financing of the pension of former officials) that, because of the specific circumstances, only one undertaking had incurred, by difference from its competitors. However, in the case at hand, there is no such structural disadvantage given that operators are expected to bear the costs of technological upgrades and related parallel simulcast. Operators using the satellite platform bore the costs of upgrading to DVS-T2. Also, DTT operators bore the costs of upgrading to digital technology during the analogue-to-digital transition. Even wider, network operators are normally expected to cover the costs for compliance with regulatory obligations, including those attached to the rights to use spectrum.
- (235) The beneficiary also submitted that there is no advantage because Czechia needed consensus from DTT operators to amend their assignments of radio frequencies pursuant to Section 19 of the ECA, in particular since the EPaC Decision is not directly applicable/binding on DTT operators, but addressed to Member States (recitals (163)). However, the notified measure is not linked to any possible damages and has not been notified to the Commission as a settlement between Czechia and the DTT operators. The compensation does not take into account elements, such as the date of expiry of each operator's spectrum rights (beyond 2020). In addition, the Commission notes that Section 19 of the ECA already allowed CTO to unilaterally change (or even to withdraw) authorisations to use radio frequencies when it is necessary to fulfil commitments under Union law (recital (39)), therefore Czechia was entitled to take measures in this regard, without the agreement of the DTT providers.
- (236) The argument of the beneficiary that Czechia could have faced damage claims on the grounds of a de facto expropriation is not relevant for the assessment of an advantage linked to the notified measure. The notified measure is a compensation for compliance with a regulatory obligation, i.e. the operation of transitional networks, not a settlement between Czechia and DTT operators as a result of concrete damage claims. Further, rights of use spectrum are not akin to rights of property, on the one hand because spectrum is public property and on the other, because the legislative framework provided already the possibility to modify or withdraw such rights before term. More, the rights of use of the beneficiaries were not actually withdrawn, but prolonged until 2030, providing them regulatory predictability as regards the use of spectrum.

⁽¹³⁴⁾ Judgment of 23 March 2006, *Enirisorse SpA v Sotacarbo SpA*, C-237/04, EU:C:2006:197, para 48.

⁽¹³⁵⁾ Judgment of the General Court of 14 July 2016, *Germany v Commission*, T-143/12, EU:T:2016:406, para 132.

- (237) It could be argued that a change to the authorisations to use radio frequencies pursuant to Section 19 of the ECA would have entitled DTT operators to a certain compensation. The possibility for such compensation is described in Section 19(2) and Section 27 of the ECA (recital (40) and footnote 43). Subsection 6 of Section 27 describes the cost categories for which compensation can be requested (prior to the Digital Amendment), including costs of technical adjustments, depreciated costs of decommissioned equipment, costs of dismantling and decommissioning equipment, and the costs of securing the electronic communications services provided through the existing radio frequencies in a different manner, for the time needed to ensure the necessary technical measures to carry out the changes in the use of radio frequencies (footnote 45). Nevertheless, the Commission observes the above categories of costs do not encompass those covered under the notified measure, i.e. are not related to the operation of transitional networks⁽¹³⁶⁾. The operation of transitional networks was not eligible to receive any compensation until the adoption of the Digital Amendment enabling such compensation (recital (44)). Furthermore, the Commission notes that the costs listed in Subsection 6 of Section 27 correspond to costs which in principle have already been covered as part of the measure approved by Decision in case SA.55742 concerning the compensation of spectrum-related equipment.
- (238) The beneficiary also argued that the transitional networks were operated on a free of charge and non-profit basis, established in order to ensure a public policy objective, the only possible remuneration for DDT operators being the compensation under the measure (recital (165)). The beneficiary indicated that its revenues have dropped after the release of the 700 MHz band and related transition to DVB-T2, regardless of any increase of the data capacity in the operated network (recital (166)). Still, this does not mean that the costs of operation of the transitional networks were not regulatory costs inherent to the economic activity of any spectrum holder and that the compensation of such costs would not provide an advantage for the DTT operators. The identification of the advantage does not depend on whether incurring those costs may or may not increase the turnover or the profits obtained by affected undertakings.
- (239) In view of the above and in line with previous practice⁽¹³⁷⁾, the Commission considers that the measure relieves DTT operators from regulatory costs that are inherent to their business activity while other operators have to bear such regulatory costs by themselves. In the absence of the notified measure, the DTT operators would have been obliged to bear all the costs stemming from the operation of transitional networks during the migration to the sub-700 MHz band.
- (240) Moreover, the measure enabled DTT operators to provide DTT transmission services without interruption. Furthermore, following completion of the migration process for which the measure has been set up, DTT operators now use enhanced terrestrial television networks which have more capacity and are capable of providing enhanced television services.
- (241) The above considerations are applicable to the situation of all three beneficiaries that would benefit from the aid under the notified measure. Furthermore, upon receiving the compensation, the three beneficiaries would be advantaged with respect to the situation of CDG, which held spectrum rights, operated network 3 and also had to upgrade its final network 23 to DVB-T2/HEVC.

⁽¹³⁶⁾ The updated ADL study dated 2 August 2019 presents an estimation of the quantification of the costs which would require compensation to holders of spectrum assignments according to the different legal basis (see section 4.5.1, table 4, “costs of allocation holders – legislated”, of the study). According to that study, costs are divided between costs that are borne under Section 27(6)(a) to (d) of the ECA as legal basis [technical adaptations to existing installations, residual capex, and dismantling] and costs under the Digital Amendment as legal basis [transitional networks and removal of interferences]. However, this further shows that the costs eligible for compensation under the notified measure (i.e. the Digital Amendment) go beyond the costs that were eligible under the ECA in the situation of a modification of the spectrum assignments before their term.

⁽¹³⁷⁾ Decision C(2018)8356 final of 12.12.2018, SA.47258 (2017/N) – Germany, Spectrum migration of DTT platforms resulting from the liberation of the 700 MHz band (‘Commission Decision SA.47258’), https://ec.europa.eu/competition/state_aid/cases/271860/271860_2038548_133_2.pdf; Decision of 2.8.2019, SA.51080 (2018/N) – Spain, Audio-visual broadcasting transmission aid for audio-visual service providers (‘Commission Decision SA.51080’), https://ec.europa.eu/competition/state_aid/cases1/201934/279519_2089801_104_2.pdf.

- (242) The Commission concludes that the measure confers an economic advantage within the meaning of Article 107(1) of the Treaty to the three beneficiaries.

5.1.5. Selectivity

- (243) Article 107(1) TFEU qualifies as aid measures granted by Member States or through State resources, which distort or threaten to distort competition “*by favouring certain undertakings or the production of certain goods*”. This criterion serves to identify measures that favour certain undertakings or certain sectors of the economy.
- (244) In this respect, the Commission notes that the measure intends to compensate three DTT operators that operated transitional networks in the context of the release of the 700 MHz band (recital (53)). Beneficiaries of the measure are undertakings operating in the sector of TV broadcasting transmission services. Therefore, the measure only concerns undertakings operating in a concrete segment of the broadcasting sector, on which Czechia imposed the regulatory obligation to operate transitional networks, specifically *Česká televize* (transitional network 11), CRa (transitional network 12), and DB (transitional network 13). The Commission considers that the notified measure constitutes individual aids to those three beneficiaries (recital (222)). In the case of individual aid, the finding of an advantage is in principle sufficient to support the presumption that it is selective ⁽¹³⁸⁾.
- (245) One beneficiary insisted that the Commission must explain why undertakings using DTT should be regarded as being in a factual and legal situation comparable to that of undertakings using other technologies in order to determine whether the measure is selective (recital (167)). According to the case law of the Court a measure is “selective only if, within the context of a particular legal regime, it has the effect of conferring an advantage on certain undertakings over others, in a different sector or the same sector, which are, in the light of the objectives pursued by that regime, in a comparable factual and legal situation.” ⁽¹³⁹⁾
- (246) Taking into account that the aid is in the form of subsidies (i.e. direct grants), the system of reference in this case are the normal market conditions under which those undertakings operate. The objective of the system of reference cannot be one where subsidies are to be expected, since under normal market conditions, operators should bear their own costs for complying with regulatory obligations. As explained in section 5.1.4, the Commission considers that the notified measure concerns regulatory costs which are inherent in the normal activity of DTT operators in Czechia. The measure thus constitutes a derogation from the system of reference (i.e. normal market conditions), since it alleviates the normal costs for certain companies.
- (247) The beneficiaries of the notified measure are therefore favoured compared to all other undertakings in all other sectors and in the same sector, which have to bear their own costs. The measure is therefore *prima facie* selective.
- (248) Alternatively, if it could be considered that the system of reference was limited to the sector of transmission of TV broadcasting (which is not the case), and if the aim of that system of reference was considered, it should be noted that, in the sector of transmission of TV broadcasting, there are other competing technological platforms, such as satellite, cable or IPTV (recital (21)) ⁽¹⁴⁰⁾, which are not compensated for regulatory costs under normal market conditions. Those operators using other technological platforms are in a comparable factual and legal situation to DTT operators since they have to bear the costs associated with the technological upgrades of their networks and associated simulcast periods. Satellite operators for example are also subject to obligations for the use of spectrum which derive in regulatory costs and their rights of use may be also subject to amendments. Satellite operators also need to finance technological upgrades on their own (e.g. from DVB-S to DVB-S2 ⁽¹⁴¹⁾). The fact that the operators of

⁽¹³⁸⁾ See judgment of 4 June 2015 in C-15/14 P, *Commission v MOL*, ECLI:EU:C:2015:362, para. 60-.

⁽¹³⁹⁾ See judgment of 20 December 2017 in C-70/16 P, *Comunidad Autonoma de Galicia, Retegal v Commission*, ECLI:EU:C:2017:1002, para. 61.

⁽¹⁴⁰⁾ *Ex multis*, judgment of 30 June 2016, *Belgium v. Commission*, C-270/15 P, EU:C:2016:489, paragraph 50.

⁽¹⁴¹⁾ DVB-S stands for Digital Video Broadcasting for Satellite, is a technology standard for the transmission of video broadcasting communications via satellite. DVB-S1 is the upgraded, more recent version of the standard.

the different technological platforms for video broadcasting in Czechia have different business models and may not be competing in the same segment (e.g. FTA v pay-TV) does not put them in a different legal and factual situation in light of the objective of providing transmission of TV broadcasting. The different competing platforms (DTT, satellite, IPTV) are substitutable. All are capable of the transmission of TV services, either FTA or pay-TV, as several examples provided during the investigation demonstrate, e.g. some commercial broadcasters repeatedly announced intentions to encrypt HD versions of their programmes (recital (153)), Skylink/M7 Group experimented with a pay-DTT service (recital (91)), Telly was considering an IPTV card for FTA services (recital (154)). Further, Czechia has confirmed the substitutability of the services when it argued that the main risk during the transition was the risk of loss of audience in favour of other platforms derived from an uncontrolled migration (recital (103)). In addition, Czechia confirmed that there is no legal impediment for DTT to be encrypted and offer pay-TV services. Thus, the DTT operators have the choice of changing their business model at any time.

- (249) Even if the release of the 700 MHz band only affected DTT operators, the Commission disagrees that the system of reference can be set narrowly to coincide with the exact circle of beneficiaries, i.e. certain DTT undertakings that operated transitional networks. Accepting that the system of reference only includes the undertakings affected by a regulatory measure would mean that any compensation for a regulatory measure would escape State aid control, since most regulatory measures are addressed to specific segments of the market, taking into account their characteristics (and thus would apply only to certain providers), given that it would not be selective. On the other hand, all market segments are prone to regulatory measures that result in compliance costs for the providers to whom those obligations are addressed. As previously explained, the Commission considers that the effects of the regulatory measures arising from the release of the 700 MHz band are inherent to the activity of DTT operators. Therefore, the system of reference for the purposes of examining selectivity cannot be limited to the undertakings that were subject to a specific regulatory obligation.
- (250) One beneficiary argued that the compensation may be linked to public service obligations. However, there is no indication that the notified measure is linked with any public service obligations. In any case, it should be recalled that a measure remains selective even when its objective is to favour financially organisations regarded as socially deserving ⁽¹⁴²⁾ or when they create positive effects on the economy, which go beyond their individual interest ⁽¹⁴³⁾. The positive effects of the transition designed by Czechia for the release of the 700 MHz band cannot undermine the conclusion of the selectivity of the measure.

5.1.6. *Distortion of competition and effect on intra-Union trade*

- (251) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes ⁽¹⁴⁴⁾.
- (252) As explained in the previous sections, the measure applies to three DTT operators. Those three operators compete in particular with other operators using other technological platforms for video broadcasting (satellite, cable, IPTV). CRa belongs to a group which is active at international level (footnote 31) and in several sectors of activity beyond DTT transmission services. *Česká televize* as public broadcaster competes with commercial broadcasters.

⁽¹⁴²⁾ See for instance judgment of 10 January 2006 of the Court of Justice in C-222/04, *Cassa di Riparmio di Firenze*, EU:C:2006:8, para 136 to 138.

⁽¹⁴³⁾ See judgment of 20 September 2019 of the General Court in Case T-674/17, *Port de Bruxelles e.a. v. Commission*, EU:T:2019:651, point 179.

⁽¹⁴⁴⁾ Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, 730/79, EU:C:1980:209, paragraph 11; Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., EU:T:2000:151, paragraph 80.

- (253) One beneficiary argued that in order to be distortive, the measure would have to improve the competitive position of the recipient compared to other undertakings with which it competes, noting that DTT operators do not compete with other technological platforms and that the measure is intended to compensate the recipients for the additional incremental costs incurred due to the state-imposed regulatory changes (recital (169)). However, it is enough that the aid allows the recipient undertaking to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations ⁽¹⁴⁵⁾.
- (254) The Commission considers that other technological platforms are in sufficiently close competition to the beneficiaries, in particular as regards the end users of the services provided using different platforms, in order to conclude that the measure threatens to distort of competition with the meaning of Article 107(1) of the TFEU. In any event, the Commission considers that the measure threatens to distort competition and affects trade between Member States since the measure strengthens the competitive position of the three beneficiaries.
- (255) Therefore, the measure threatens to distort competition and affect trade between Member States.

5.1.7. *Conclusion on the existence of aid*

- (256) In light of the above, the Commission concludes that the measure fulfils the criteria laid down in Article 107(1) TFEU and constitutes State aid within the meaning of that Article. The Czech authorities did not contest that conclusion.

5.2. **Lawfulness of the aid**

- (257) In the Opening Decision, the Commission indicated that it was not in a position to conclude on the compliance with the standstill obligation laid down in Article 108(3) TFEU (recital (101) of the Opening Decision). In recital (99) of the Opening Decision, the Commission observed that the relevant provision of the ECA to which Czechia referred as the standstill clause ⁽¹⁴⁶⁾, as amended by the Digital Amendment, referred to procedures before the Commission but left discretion to the national authorities. Furthermore, the aid beneficiaries already filed their applications to CTO, which has already carried out its audit of the eligible costs. On the other hand, in recital (100) of the Opening Decision, the Commission noted that the legal basis of the measure does not detail elements of the aid such as the categories of eligible costs, the maximum aid amount or the aid intensity, as described by Czechia in the Opening Decision. Further, the Czech authorities have confirmed that no aid will be paid out before the approval of the measure by the Commission (recital (60)).
- (258) According to the case law, aid must be considered to be granted at the time that the right to receive it is conferred on the beneficiary under the applicable national rules ⁽¹⁴⁷⁾. The actual transfer of the resources in question is not decisive.
- (259) The Commission notes the sincere cooperation of the Czech authorities in the current procedure in order to respect the standstill obligation laid down in Article 108(3) TFEU. The 2016 Strategy already specified that the Government should provide compensation once the Commission has assessed its compatibility with the internal market ⁽¹⁴⁸⁾. Since December 2016, the Czech authorities engaged in pre-notification discussions with the Commission regarding different measures related to the release of the 700 MHz band, including the compensation for the operation of transitional networks (recital (1)). In July 2021, Czechia notified the measure (recital (3)) and has committed not to pay out the aid before the approval of the measure by the Commission.

⁽¹⁴⁵⁾ Judgment of the Court of Justice of 3 March 2005, *Heiser*, C-172/03, EU:C:2005:130, paragraph 55.

⁽¹⁴⁶⁾ Pursuant to the translated version of the Digital Amendment provided by the Czech authorities, it states: “Where proceedings are conducted before the Commission regarding state aid in relation to determination of the amount or payment of effectively and efficiently incurred costs, it shall be considered a request for preliminary ruling”.

⁽¹⁴⁷⁾ Judgment of 19 December 2019, *Arriva Italia and Others*, C-385/18, EU:C:2019:1121, paragraph 36.

⁽¹⁴⁸⁾ Paragraph II, 1. c) of the 2016 Strategy. Resolution of the Government of Czech Republic n°648 of 20 July 2016.

- (260) The Commission considers that the notified measure includes the commitment of the Czech authorities not to pay out the aid before the notification of a Commission decision approving the measure. Therefore, even if the standstill clause included in the Digital Amendment could leave a margin of discretion to the Czech authorities, that discretion is not anymore present in the notified measure.
- (261) Lastly, the effectiveness of the standstill clause was further clarified by the subsequent amendment of the ECA, applicable as from 1 January 2022 (recital (175)). Consequently, in the circumstances, the Commission considers that the notified measure, together with the clarification provided by the Czech authorities in the proceedings before the Commission and through the legislative amendment, complies with the standstill obligation laid out in Article 108(3) TFEU.
- (262) In view of the above, the Commission considers that Czechia has respected the standstill obligation laid out in Article 108(3) TFEU.

5.3. Compatibility of the aid

- (263) Since the measure constitutes State aid within the meaning of Article 107(1) TFEU, its compatibility with the internal market needs to be assessed. The Czech authorities claimed that the measure is compatible with Article 107(3)(c) TFEU, which states that “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*” may be considered compatible with the internal market.
- (264) Therefore, in order to be declared compatible with the internal market under Article 107(3)(c) TFEU, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest ⁽¹⁴⁹⁾.
- (265) Since there are no guidelines that specifically cover the assessment of the compatibility of the notified measure, the Commission will carry out its assessment directly on the basis of Article 107(3)(c) TFEU.

5.3.1. Facilitation of the development of an economic activity

5.3.1.1. Economic activity facilitated by the measure

- (266) In recitals (106)-(107) of the Opening Decision, the Commission preliminarily concluded that the measure helped the three DTT operators to develop their economic activity in the sector of transmission of terrestrial television services and hence fulfils the first criterion. No comments have been received opposing this preliminary view.
- (267) The notified measure aims at compensating three DTT operators for costs incurred for the operation of transitional networks using upgraded technological standards (DVB-T2/HEVC) during a simulcast period, imposed as a regulatory obligation related to the early release of the 700 MHz band. In recital (106) of the Opening Decision, the Commission noted that the measure supported the upgrade of networks operated by the three DTT operators allowing them to offer better services. It enabled DTT operators to increase the capacity in their networks and offer more programmes with a better video quality (from SD to HD) for a certain number of programmes ⁽¹⁵⁰⁾, and possibly to include pay-tv offers ⁽¹⁵¹⁾. Further, it helped retain and accustom viewership to the new terrestrial television standard (DVB-T2/HEVC), ensuring the audience is ready for the upgraded offers.

⁽¹⁴⁹⁾ Judgment of 22 September 2020, C-594/18 P, Austria v Commission, EU:C:2020:742, para. 19.

⁽¹⁵⁰⁾ The transition to DVB-T2 resulted in an increase of the number of channels and an improvement of the quality of signal (from SD to HD).”, in BNE is pleased to announce that its Czech member České Radiokomunikace (CRA) has now completed the transition from DVB-T to DVB-T2 and released the 700 MHz band, 13 November 2020, accessible on <https://broadcast-networks.eu/transition-to-dvb-t2-completed-in-the-czech-republic/> (accessed on 4 February 2022).

⁽¹⁵¹⁾ M7 Group to launch Czech pay-DTT, <https://www.broadbandtvnews.com/2020/08/31/m7-group-to-launch-czech-pay-dtt/> (accessed on 8 March 2022).

- (268) To the extent that the notified measure has an incentive effect (section 5.3.1.2), it facilitates the economic activity of providing DTT broadcasting transmission services of the three beneficiaries by compensating costs of the operation of the transitional networks in the upgraded standards, such as increased capacity and higher video quality, as well as retaining viewership. Further, the final networks also benefitted from the reuse of equipment of the transitional networks as well as the configuration and stabilisation of the networks carried out during period of parallel broadcasting. The new terrestrial television standards (DVB-T2/HEVC) also represent substantial improvements to households in particular allowing them to receive a more varied free-to-air offer (i.e. possibility for more TV channels) and improved quality (HD and Ultra HD).
- (269) The Commission further notes the importance of the DTT platform in Czechia for the transmission of FTA TV services, including those provided by the Czech public broadcaster, in particular for reinforcing social cohesion, the functioning of democracy and the economy in general. The Commission also notes that the measure contributes to achieve compliance with the obligation set out in the EPaC Decision namely the release of the 700 MHz band by terrestrial broadcasting services, including by facilitating the transition to more spectrum-efficient technologies, specifically DVB-T2/HEVC standards (recital (16)).

5.3.1.2. Incentive effect

5.3.1.2.1. On the start of the works before the formal adoption of the acts granting the aid – formal incentive effect

- (270) In recitals (112)-(114) of the Opening Decision, the Commission expressed doubts on the incentive effect of the measure because the DTT operators started investing in the transitional networks as from March 2017, before the EPaC Decision was adopted in May 2017, the Digital Amendment in July 2017, and the Technical Transition Plan in August 2018. The start of the migration also preceded the final agreements on international coordination of frequencies concluded by Czechia with its neighbouring countries. The Commission noted that 2016 Strategy did not seem to provide sufficient guidance on key parameters of the scope of the compensation and of the migration process, including the coordination of frequencies with neighbouring countries. Also, the Commission noted that the original DVB-T transmitters were switched-off in October 2020 and thus all costs had already been incurred before the adoption of a final Commission decision on the measure.
- (271) Czechia explained that the DTT operators actively anticipated the release of the 700 MHz band already in the period 2013-2016 in the framework of the public discussions of the procedure and the proposed measures. For this reason, the DTT operators would have invested in the transition even before March 2017, even if those costs are not subject to any compensation (recital (108)). Czechia argued that the fact that the process was agreed by consensus between the Czech authorities and the affected DTT operators does not remove the incentive effect of the measure (recital (99)).
- (272) Further, CRA explained that the measure forms part of a package of measures described in the 2016 Strategy, which has been discussed with the Commission. It also argued that the Commission accepted that the measures approved in case SA.55742, which stem from the same legal basis, have incentive effect.
- (273) CRA also submitted that the assessment of the incentive effect should be based on the judgment in case *Graphischer Maschinenbau* ⁽¹⁵²⁾, according to which, account must be taken of the wider context, including the communications from the national authorities (recital (184)). It explained that before starting the investments it received assurances related to the compensation mechanism from the Czech authorities already before March 2017 (recital (185)); the 2016 Strategy was a key document (recital (186)) that was the outcome of public discussions since 2013, the beneficiary actively participated in the expert group set up by the Czech Ministry of Industry and Trade participating in the 2016 Strategy (recital (185)) and CTO had already issued frequency authorisations to CRA in 2016 for the transitional networks (recital (187)).

⁽¹⁵²⁾ See judgment of 14 May 2002 in case *Graphischer Maschinenbau v Commission*, T-126/99, EU:T:2002:116, paragraph 44: "[...] in order to assess whether the element of inducement was present the Commission ought to have taken into account the precise form and nature of the communications and acts emanating from the competent national authorities, together with the other pertinent factors [...]".

- (274) The Commission first observes that the 2016 Strategy already identified in principle which transitional networks will be established and the links with the existing networks, as well as with the future networks (recital (32) and (218)). Further, the Commission notes that the legal basis of the measure stems from the joint reading of the 2016 Strategy, the Digital Amendment and the Technical Transition Plan. The Digital Amendment provides for the details of the compensation which was foreseen in the 2016 Strategy, accepting the eligibility of costs incurred since the moment of adoption of the 2016 Strategy (recital (46)). The Technical Transition Plan confirms the three transitional networks and establishes the technical conditions for their operation, reflecting the actual start of the operation of the transitional networks in the past (i.e. March 2017 for transitional network 12).
- (275) Even if as noted in recital (113) of the Opening Decision, the 2016 Strategy is not the legal basis of the measure *stricto sensu* (i.e. conferring a right to receive the aid), the fact remains that the 2016 Strategy was a key document on the basis of which the beneficiaries could derive reasonable assurances that they will operate one if the transitional networks covered by the measure. Therefore, some beneficiaries could start the works for the construction of the transitional networks on the basis of the 2016 Strategy.
- (276) In this regard, the formal incentive effect can also be derived from the existence of precise assurances provided by the Member State to the beneficiaries, which allowed them to start the works at their own risk. The fact that all costs had been incurred before the approval of the measure by the Commission is not definitive for the (in) existence of a formal incentive effect. In this respect, the Commission considers that the elements enumerated in recital (272) are sufficient to demonstrate that the Czech authorities provided precise assurances to the three beneficiaries, which were sufficient to justify the early start of the works until the formal adoption of the acts providing for the measure. In this respect, it should be noted that CRa started parallel broadcasting before the adoption of the Digital Amendment in part of the Czech territory and for a period of up to four months (i.e. since March 2017 to July 2017), therefore CRa had only incurred a fraction of the total costs of the operation of the transitional networks at its own risk before the adoption of the Digital Amendment⁽¹⁵³⁾. According to the Technical Transition Plan, DB only started parallel broadcasting in August 2017 and Česká televize in March 2018, which means in both cases the beneficiaries started after the adoption of the Digital Amendment.
- (277) In view of the above, the formal incentive effect is not negated by the early start of the works ahead of the formal adoption of the acts providing for the measure. However, the existence of such a formal effect is not sufficient since the notified measure requires a substantive incentive effect.

5.3.1.2.2. On the existence of commercial incentive for the three DTT operators - substantive incentive effect

- (278) In order to be compatible with the internal market, the planned aid must have an incentive effect. To that end, it must be demonstrated that, in the absence of the planned aid, the investment intended to implement the project at issue would not take place. If, on the other hand, it appears that that investment would take place even without the planned aid, the conclusion must be that the aid serves merely to improve the financial situation of the recipient undertaking(s), without, however, meeting the requirement in Article 107(3)(c) TFEU that it is necessary for the development of certain activities⁽¹⁵⁴⁾.

⁽¹⁵³⁾ It can be estimated that CRa had incurred in approx. 6% of the total costs of operation of parallel broadcasting for network 2 before the adoption of the Digital Amendment (i.e. 13% of the total simulcast duration in 46% of the areas). According to the Technical Transition Plan (see recital (49) and footnote 56), CRa started parallel broadcasting before the Digital Amendment in 12 high power transmitter out of the 26 transmitters in network 2 (i.e. 46% of the areas), and for a maximum duration of four months before the adoption of the Digital Amendment (i.e. from March 2017 to July 2017) out of the 30.8 months duration of operation of parallel broadcasting in network 2 (i.e. $4/30.8 = 13\%$ of the duration).

⁽¹⁵⁴⁾ Judgment of 12 September 2019, *Achamos Grupê and Achema v Commission*, T-417/16, EU:T:2019:597, paragraph 84.

- (279) The Commission actively supported the process of making the 700 MHz band available for the provision of wireless broadband services and the need to adapt the spectrum available for terrestrial broadcasting transmission services (recital (14)). The EPaC Decision adopted by the co-legislators in May 2017 provided the obligation that the 700 MHz band was to be allocated exclusively for wireless broadband services by 30 June 2020, recognising that this band is a valuable asset to provide both additional capacity and universal coverage for wireless broadband services in particular in rural, mountainous and insular areas as well as indoor uses. As a result, terrestrial provision of broadcasting services had to vacate the frequencies used in the 700 MHz band in principle by the same date (recital (15)).
- (280) The EPaC Decision acknowledged the possibility of the Member States to compensate, where appropriate, the direct costs related to the release of the 700 MHz band, including, inter alia, to facilitate transition to more spectrum-efficient technologies, specifically mentioning DVB-T2/HEVC standards, in compliance with State aid rules (recital (16)).
- (281) The Commission has examined under State aid rules a number of measures implemented in order for DTT operators to release the 700 MHz band, raising no objections concerning measures that were targeted to financing the replacement and adaptation of the technical equipment needed for completing the frequency conversion from the 700 MHz band to the sub-700 MHz band ⁽¹⁵⁵⁾. In those cases, the Commission acknowledged that a market failure can exist in the form of a coordination problem, where market players are unwilling to agree on a common timetable to free the relevant frequencies, or when they do not sufficiently internalise the positive effects of the release of the relevant frequencies for the society as a whole. In those cases, the support measures did not cover technological upgrades of the DTT networks. In this respect, the Commission approved already a measure supporting the replacement of frequency-dependent equipment in Czechia, applicable also to the three beneficiaries (Decision in case SA.55742).
- (282) However, measures involving support for technological upgrades of the DTT platform, even when related to the release of the 700 MHz, can affect the status quo of competition between the different technological platforms (e.g. DTT, satellite, cable, IPTV) that can be used for TV broadcasting. Technological upgrades are typically expected to provide and are providing advantages that can be commercially exploited by the beneficiaries of such measures and that those beneficiaries would normally implement by themselves, in the absence of aid. In the case of the upgrade to DVB-T2/HEVC, the most obvious advantages are the higher transmission capacity (for the same spectrum) and the better video compression, allowing the increase of the number of TV channels that a DTT network can simultaneously broadcast and/or to improve the video quality (e.g. higher video definition).
- (283) For these reasons, the Commission has placed particular importance in the assessment of such measures to the incentive effect and the existence of a market failure, given that, save in exceptional circumstances, DTT operators should be able to finance technological upgrades without recourse to State aid.
- (284) In April 2024, the Commission approved a Slovak measure which included support for the upgrade to DVB-T2 standard for one of the four DTT networks, as well as the related information campaign (Decision in case SA.55953). In that case, the Commission considered that there were exceptional circumstances that warranted public support for the technological upgrade. In particular, the Commission considered that, without the aid, the DTT operator in Slovakia would have had no incentive to implement the upgrade that was necessary for the release of the 700 MHz band, thereby jeopardising continuity and availability of DTT services for end users after the release of that band. The Commission noted in this regard the declining trend of the Slovak DTT market (i.e. declining by at least 45 % down to a market share of less than 10 % in 2022 ⁽¹⁵⁶⁾) and the low DVB-T2 penetration in Slovakia (i.e. 80% of the population would only be equipped with compatible receivers after 2024) ⁽¹⁵⁷⁾. Furthermore, due to the

⁽¹⁵⁵⁾ See Commission decision of 12.12.2018 on “State Aid SA.47258 (2017/N) – Germany Spectrum migration 700 Mhz”, C(2018) 8356 final; Commission decision of 2.8.2019 on “State Aid SA.51080 – Spain – Audio-visual broadcasting transmission aid for audio-visual service providers”, C(2019) 5764 final.

⁽¹⁵⁶⁾ The exact market share and decline of the DTT market in Slovakia are confidential.

⁽¹⁵⁷⁾ See recitals (12) and (64) of the Decision in case SA.55953: “the declining trend of the DTT market in Slovakia: in 2013, DTT market share was approx. [10 % - 20 %], whereas in 2022 it was equal to [0 % - 10 %] (see recital (9)), which means a decline of approx. [45 % - 55 %] of DTT relative market share. [...] The low DVB-T2 penetration in Slovakia: according to estimates made by the Slovak authorities, most households (about 80%) will be equipped with DVB-T2 television receivers only after 2024”.

declining market share and the refusal of the broadcasters to finance the upgrade, the provider could not expect to recoup the costs for the technological upgrade. At the same time, for technical reasons, the migration to the sub-700 MHz band could not take place in the absence of the upgrade.

- (285) In the case at hand, the notified measure supports a technological upgrade to more advanced standards - DVB-T2/HEVC. In the Opening Decision, the Commission acknowledged the positive effects of the measure for the development and continuity of DTT services in the context of the release of the 700 MHz band, as well as the important role of media, including TV services, for social cohesion, the functioning of democracies and the economy in general. However, the Commission preliminarily considered that the measure went beyond maintaining the status quo, allowing DTT operators to remain competitive while reducing their investment costs, which other operators such as satellite operators have to undertake with private resources (recital (89)).
- (286) In the Opening Decision, the Commission also raised doubts concerning the incentive effect of the measure. The Commission acknowledged that the three DTT operators holding rights of use of frequencies may have no commercial incentive to liberate a certain part of the spectrum and move to another part of it for the benefit of wireless communications providers, as required by the EPaC Decision (recitals (109)-(110) of the Opening Decision). At the same time, the Commission expressed doubts that the notified measure has an incentive effect because there were commercial benefits for DTT operators that could incentivise them to invest in the technological upgrade on their own initiative: (i) the migration entails the technical upgrade of the networks, increasing their capacity and quality, (ii) the Digital Amendment entitled operators to extend their licenses until 2030, improving the predictability for the investments, (iii) the Czech authorities' ambition to deploy two additional networks in the future could be viewed as a positive prospective for market development (recitals (111)-(112) of the Opening Decision).
- (287) In the observations submitted, one beneficiary recalled (section 4.3.5) that the DTT operators were not ready to invest in the technological upgrade in the period 2017-2020, given that the investment cycle generally encompasses 12-15 years in the sector of electronic communications and that DTT operators had not yet recouped investments made for the analogue-to-digital switchover that were completed in 2012. The early release of the 700 MHz band (in June 2020) was also in contradiction with the existing commercial contracts with TV broadcasters and with the cycle of renewal of TV receivers in households. The beneficiary pointed out that even if the data capacity of the networks has increased as a result of the transition to DVB-T2, it has not been able to sell the entire capacity of the new networks and its revenues have even dropped following the transition to DVB-T2. Czechia concurred with these observations and indicated that it was generally assumed that the natural transition to DVB-T2 technology would have taken place as from 2022-2024 together with the launch of 1-2 additional DVB-T2 broadcast networks (recitals (97)-(98)).
- (288) Further, Czechia explained that the Czech DTT market has remained relatively stable despite a decline in DTT market share (from 60% before the transition to 52.9% in 2023) (recitals (101)-(102)). The DTT turnover results mostly from the revenues from FTA broadcasters and thus ultimately depends on the TV advertising market, which is based on audience (recital (102)). The main risk during the transition was the risk of loss of audience derived from an uncontrolled migration. This perceived risk pushed broadcasters to renegotiate lower remunerations for the DTT operators after the transition (recital (103)).
- (289) In addition, according to Czechia, despite the increase in the number of TV channels being broadcasted, the three DTT operators could not derive a commercial benefit from the transition, their revenues and profitability have declined and they have faced significant investment costs and services for the transitional networks that were not billed to the broadcasters (recital (105)).

- (290) The Commission considers that in view of the 12-15 years investment cycle and considering that the previous significant technological upgrade for DTT was completed in 2012, the above elements confirm that the upgrade of the DTT networks in the period 2017-2020 as provided in the Technical Transition Plan, was outside the normal investment cycle for all four DTT operators, including the three beneficiaries which were required to operate transitional networks and the fourth operator which was not but still was required to use upgraded technologies in its final network. It seems reasonable to expect that DTT operators would have continued their existing business model based on DVB-T until the expiry of the initial authorisations in 2021-2024, which would have been also consistent with their existing commercial contracts with TV broadcasters. In addition, as recalled by CRa, the 2016 Strategy already described the DVB-T2 switchover as a mandated process, to which broadcasters had repeatedly refused to contribute.
- (291) Czechia and the beneficiaries further addressed the doubts expressed by the Commission in recital (124)(a) of the Opening Decision concerning several elements: (i) the benefits of DVB-T2 and HEVC standards had been identified by the Czech authorities and by the terrestrial television industry several years before the obligation to release the 700 MHz; that (ii) CRa's 2011 annual report mentioned that DVB-T2 could help develop their business, (iii) that CRa already tested the DVB-T2 technology in 2012. In this regard, it was explained that experimental tests of DVB-T2 technology were carried out in 2012, but operators normally invest in the verification of new technologies, but this does not mean that they will immediately deploy those technologies (recital (100)). For example, CRa tested the DVB-T technology in 1999 but did not complete its deployment until 2012 (recital (181)). Similarly, the mentioning of the DVB-T2 technology in CRa's 2011 annual report did not necessarily imply any timeframe for its future commercial use (recital (182)). The Commission considers that these explanations are reasonable, as both authorities and operators may show an interest in new transmission and encoding standards and even conduct experimental tests of such technologies much ahead of their commercial deployment.
- (292) However, the fact that the regulatory intervention triggered DTT operators to invest outside their normal investment cycle is not sufficient to conclude that the beneficiaries did not have an incentive to invest on their own initiative. In particular, the operation of the transitional networks brings benefits mostly to the three DTT operators, allowing them to transition to the upgraded technology while reducing the risk of a loss of audience in the process. Furthermore, the equipment covered by the compensation is partly reused in the final networks. As examined in detail in section 5.3.2.4.3, the notified measure includes compensation for the accounting depreciation of the equipment during its use in the transitional networks, but such accounting depreciation goes beyond the actual wear and tear of the equipment. Therefore, the Commission considers that the notified measure also contributes to finance the upgrade of the final networks.
- (293) In addition, the Commission already noted in recital (124)(b)-(e) of the Opening Decision that there are other elements that could positively influence the market outlook of DTT operators and incentivise them to invest in the technological upgrade (even outside the normal investment cycle). Firstly, DTT operators when they have started to prepare the technological upgrade, they could reasonably expect the extension of their licenses until 2030 on the basis of the Digital Amendment and as already foreseen in the 2016 Strategy. By investing in 2017-2020, they could have reasonably expected the amortisation of their investment by that term, therefore having investment predictability. Secondly, the original DTT networks were close to full capacity and competing TV platforms such as satellite had already upgraded their systems allowing them to improve the quality of their content. As a result of the competitive pressure, the DTT operators needed to invest in the technological upgrade in order to maintain their market position and not to lose end users. The technological upgrade allowed the DTT platform to maintain in general its market share. Lastly, the Czech authorities had already expressed their plans to add two new DTT networks, thus indicating that there is commercial interest in the development of this platform.
- (294) In this situation, where the operation of the transitional networks offers clear commercial benefits to the three DTT operators, where the compensation also finances partially the investment costs in the upgraded final networks and where there was a positive market outlook with investment predictability until 2030, it is of great importance to ascertain whether the beneficiaries would have invested on their own initiative.

- (295) Despite the fact that the Commission inquired about economic calculations undertaken at the time when the investment started comparing the incremental impact (in terms of operators' profitability) of the accelerated transition (recital (143) of the Opening Decision), neither Czechia nor the beneficiaries have provided any contemporary business plans of a slower-adoption scenario (i.e. as from 2022-2024) or compared those business plans with the scenario of the accelerated transition mandated by Czechia. Czechia argued that those business plans did not exist at the time when the measure was foreseen initially (recital (134)) and referred to the updated ADL study. However, the Commission notes that while the updated ADL study analysed several scenarios ((i) the upgrade to DVB-T2 with parallel broadcasting, (ii) the upgrade to DVB-T2 without parallel broadcasting, and (iii) keeping DVB-T leading to a coverage reduction) and provided a qualitative and quantitative assessment of the costs of the different scenarios (recital (45)), it did not estimate the potential revenues or the impact on the profitability of DTT operators of the technological upgrade. Further, the updated ADL study did not compare those scenarios with the scenario of a slower-adoption scenario (i.e. as from 2022-2024), which Czechia explained that it had been discarded at an early stage (footnote 87). The Commission notes that it has not received any ex-post reconstruction of contemporary business plans either.
- (296) The Commission acknowledges that ex post information provided by the Czech authorities on the DTT market shows that CRA and DB have generated lower revenues and had lower profitability in the years immediately after the transition. Nevertheless, even if the transition could lead to lower profitability in the short term, it could have positive effects in a longer timeframe (assuming that lower revenues and lower profitability are the actual result of the transition and not of other causes, like the interest of the end users to use more diversified services and channels provided by other platforms). In addition, an accelerated accounting depreciation can also lead to lower profitability in the short term. Further, without a counterfactual analysis, it is not possible to ascertain whether the transition has in fact not prevented a worse financial outcome (e.g. losing audience to other platforms) if the investments would have not taken place. In any event, the Commission observes that the profitability of CRA and DB did not seem at risk after they have covered the investments for the transition. In particular, the profitability of CRA at group level was at a similar level before (i.e. in 2017) and after the transition (i.e. in 2023). The profitability of DB had declined after the transition, but its profit margin remained at [0 – 50]% (recital (106)).
- (297) As regards the third beneficiary, *Česká televize*, the Commission considers that its business plan was not at risk as a result of the transition given that *Česká televize* is the public service broadcaster, its budget is largely above the costs of operation of the transitional network and its main source of funding does not depend on advertising ⁽¹⁵⁸⁾.
- (298) In this situation, the Commission considers that Czechia has not demonstrated that the lower revenues and profitability experienced by CRA and DB immediately after the transition were caused by the regulatory intervention (or rather by other market developments). Neither Czechia has quantified the differential impact (if any) of the regulatory intervention on the medium-term profitability of DTT operators. Taking into account the lack of business plans and the evolution of the DTT platform after the transition, the Commission considers that Czechia has not justified that the regulatory costs outweigh the potential positive commercial benefits for the operators.
- (299) In any event, even assuming that the regulatory costs could outweigh the potential commercial benefits (or even assuming an absence of commercial benefits), there is no indication that the possible impact on the profitability of DTT operators would pose a risk to the continuity of the DTT platform. Furthermore, the Commission considers that the ex post data further confirm that the DTT market is stable and that the three beneficiaries have not been heavily impacted by the regulatory obligations (CRA and DB have remained profitable after the transition and the budget of *Česká televize* is largely above the cost of operating the transitional network). The Commission therefore considers that the DTT operators were in a position to absorb the regulatory costs. This is further confirmed by the

⁽¹⁵⁸⁾ The budget of *Česká televize* was approx. EUR 260 million in 2019. *Česká televize* is funded through television concession fees which are paid by all households and legal entities that own a television or any form of television signal receiver. Television fees are the main source of funding, complemented by advertising and other activities. (source: History — English Pages — *Česká televize*).

continued profitability of the alleged beneficiaries in the absence of the payment of the aid. Adding to that, the DTT market has remained relatively stable after the transition, which should provide stability to investments, albeit with a market share declining from 60% to 52.9%. By contrast, in the situation assessed in Decision in case SA.55953, the DTT market share in Slovakia had experienced a sharp decline of at least 45 %, retaining only less than 10 % after the transition.

- (300) This latter case, was also invoked by Czechia, arguing that, like the Slovak DTT operators, the Czech DTT operators did not have a commercial incentive to upgrade their networks in the timeframe required by the release of the 700 MHz (recitals (92) and (95)-(96))). Czechia submitted that if the Commission does not approve the notified measure, this could lead to unequal treatment between Member States. The Commission does not consider that the assessment in the present case can lead to unequal treatment of Member States, since the situations concerned are not comparable (as explained above), and notes that it strives to assess each case on its own merits.
- (301) Therefore, the Commission concludes that the notified measure lacks incentive effect. Since the notified measure does not have an incentive effect, it cannot facilitate the development of an economic activity. Even only for this reason, the notified measure cannot be considered to be compatible with the internal market under Article 107(3) c) TFEU. The Commission shall nevertheless assess the other conditions required in order for a measure to be deemed compatible with the internal market under that provision, for completeness.

5.3.2. *The aid must not unduly affect trading conditions to an extent contrary to the common interest*

- (302) In order to conclude that the measure does not unduly affect trading conditions to an extent contrary to the common interest, the Commission must examine the positive effects of the measure and whether any negative effects of the measure are minimised, namely that the measure is necessary, appropriate and proportionate.

5.3.2.1. Positive effects of the aid

- (303) In recitals (118)-(119) of the Opening Decision, the Commission preliminarily considered that the measure has positive effects, facilitating the development of certain economic activities that are important for a well-functioning media landscape and for media pluralism, functioning democracies as well as Member States' economies. Media in general, including television services, plays an important role in social cohesion by ensuring a wide coverage of the population, especially in rural areas.
- (304) One complainant agreed that a well-functioning media landscape and media pluralism are important for functioning democracies and economies, however it argued that the positive effects of the measure are limited. In particular, it indicated that there is no legal provision or contractual guarantee preventing commercial broadcasters from encrypting programmes using DVB-T2 (recital (153)).
- (305) Czechia disagreed that the positive effects are limited, given that the different technological platforms use different economic models. In the case of DTT, the dominant model is FTA, where the costs for the transmission of the TV signal are paid by broadcasters to the DTT operator, while access is free for viewers. In the alternative platforms, viewers pay both for the transmission of the signal and for the content (recital (136)). Czechia also explained that the transition to DVB-T2/HEVC has translated into better-equipped households in terms of receiving equipment, which has also benefited other competing TV signal distribution platforms (recital (137)).
- (306) The Commission finds that, at the moment of the transition and still today, the DTT platform was and is the main platform used to provide FTA television services in Czechia. Before the transition (i.e. in 2017), 60% of the population relied on this platform for their television services (recital (101)). Further, one beneficiary pointed to studies indicating that substitution of the DTT platform by other platforms cannot be expected in countries with high DTT penetration such as Czechia (recital (212)).

- (307) In addition, the Commission notes that the regulatory measures adopted by Czechia contribute to comply with the obligations set out in the EPaC Decision, namely the release of the 700 MHz by terrestrial broadcasting services. The notified measure also facilitates the transition to spectrum-efficient technologies such as DVB-T2 and HEVC.
- (308) However, the Commission considers that the positive effects claimed by Czechia are not caused by the notified measure, since the compensation did not have an incentive effect on the behaviour of the DTT operators (recital (301)), but rather the regulatory measures providing for the transitional networks in the context of the release of the 700 MHz band. Consequently, while the regulatory measures which aimed at ensuring the continuity of DTT services during the release of the 700 MHz (i.e. the operation of the transitional networks) had positive effects, since they aimed to facilitate the activities of the beneficiaries, the compensation for the technological upgrade to DVB-T2 through the construction and operation of the transitional networks did not result in positive effects for the development of those activities (or those effects were limited in nature), since it could not be established that the measure incentivised the behaviour of the three beneficiaries to carry activities that they would not have taken in the absence of those measures nor was that compensation necessary for the development of those activities (section 5.3.2.2.2 below).
- (309) The Commission concludes therefore that the notified measure has no positive effects (or those effects were limited in nature).

5.3.2.2. Necessity of the measure

5.3.2.2.1. On the necessity of the measure under the EPaC Decision

- (310) State aid should be targeted towards situations where aid can bring about a material improvement that the market alone cannot deliver. In the Opening Decision, the Commission raised doubts on the existence of a market failure and on whether the compensation of the eligible costs is necessary to reach the objective of the seamless release of the 700 MHz band, in particular whether the eligible costs can be qualified as direct costs as in the EPaC Decision.
- (311) In recitals (122)-(123) of the Opening Decision, the Commission acknowledged that, in previous cases, it has recognised that access to and use of spectrum is regulated by the national authorities and that the process of releasing the 700 MHz band by 2020 is a regulatory measure, coordinated at EU level, therefore not in the hands of the market. Market players might be unwilling voluntarily to agree on a common timetable for (coordination problem), or do not consider the positive effects of (positive externalities), freeing the spectrum and modifying the network configurations, including of the transmission standard (see also recital (281) and footnote 156). This is because operators normally plan their activity until the end of validity of their spectrum assignments, which went beyond the deadline to release the 700 MHz band.
- (312) In recital (126) of the Opening Decision, the Commission expressed doubts that the compensation of the eligible costs is necessary to reach the objective of the seamless release of the 700 MHz, in particular that they can be qualified as direct costs within the meaning of Article 6 of the the EPaC Decision (recital (126) of the Opening Decision). The Commission also raised doubts that there was a need to set-up transitional networks before launching the final networks (recital (128) of the Opening Decision) and that there was a need for a simulcast period (recital (130) of the Opening Decision). The Commission sought comments on the need to compensate for the costs of the DVB-T2 transmission equipment (in particular in order to prevent significant interferences), for the HEVC equipment and for other equipment (recitals (129)(a)-(129)(c) of the Opening Decision).
- (313) As indicated in recital (311), regulation of radio spectrum is carried out by the national authorities in accordance with the Union framework. Setting the technical transmission standards (i.e. mandating DVB-T2/HEVC) is within those regulatory powers. Furthermore, the EPaC Decision recommended Member States to consider the upgrade to more spectrum-efficient technologies in connection to the release of the 700 MHz band, specifically mentioning DVB-T2/HEVC (recital (16)). The efficient use of spectrum is one of the main guiding principles of the

EU regulatory framework ⁽¹⁵⁹⁾. Therefore, while the EPaC Decision did not impose the transition to more efficient technologies, it left margin of discretion to the Member States to provide for such measures in the process of the release of the 700 MHz band, based on national circumstances.

- (314) Czechia provided a number of arguments explaining why it considered the technological upgrade necessary in the process of the release of the 700 Mhz band (recital (111)), and it referred in particular to the impossibility to carry out a direct re-farming of frequencies without a technological upgrade for reasons of international coordination of frequencies. Without the upgrade, Czechia would have been exposed to severe disruption of DTT TV broadcasting, a substantial loss of signal availability, inability to maintain the existing four DTT networks with 98% coverage and could not achieve the policy aim to deploy two additional DTT networks. Further, existing DVB-T networks would not have been compatible with neighbouring countries (in particular Germany, Austria and Poland).
- (315) In this regard, the Czech authorities argued first that the use of large SFNs with DVB-T2 was necessary to effectively redistribute the remaining spectrum, which was not possible with DVB-T technology, otherwise causing interference and loss of coverage (see recital (64) of the Opening Decision and table therein). Czechia also explained that large SFNs were not used in network 4 so that its broadcasting could be regionalised, however Czechia opted to use the same standards in all networks. If DB would not be compensated for the operation of the transitional network 13 for network 4, DB would have been disadvantaged (recital (111)(6)).
- (316) Second, the transitional networks were necessary to avoid disruptions, to incentivise households to replace their reception equipment and to get familiarised with DVB-T2 broadcasts (recital (112)(1)). Once the 700 MHz band is released, it would not have been possible to put in place a transition to DVB-T2 using transitional networks for a simulcast period due to the reduced spectrum availability (recital (112)(3)). Indeed, once the 700 MHz band would have been released, the existing networks would have exhausted the available spectrum in the sub-700 MHz band, thus it would not have been possible to set up the additional networks required to carry out parallel broadcasting (i.e. the transitional networks in the case at hand).
- (317) Third, as regards the upgrade to HEVC compression, Czechia indicated that it was also necessary to ensure sufficient capacity to broadcast programmes of the required quality. Sticking to older compression standards (e.g. AVC/H.264) would have led to the need to limit the number of programmes available or to reduce their quality. HEVC is a modern standard that meets the current and future requirements for digital broadcasting, compatible with neighbouring countries (recital (111)(7)).
- (318) The beneficiaries further elaborated on the above arguments of Czechia (section 4.3.6). One complainant however insisted that other Member States had been able to release the 700 MHz without requiring a technological upgrade (section 4.2.4).
- (319) In view of the above, the Commission considers there was no manifest error in Czechia's decision to impose the technological upgrade of the DTT networks and the use of transitional networks (however of a reasonable duration ⁽¹⁶⁰⁾) in the process of the release of the 700 MHz band. In particular, the Commission notes that Czechia confirmed that a direct re-farming without upgrade was not possible for reasons of international coordination of frequencies and that it would have not been able to keep the existing four DTT networks with 98% coverage without substantial loss of signal availability. The complainant has not substantiated its claim that a direct re-farming was possible in the situation of Czechia and that such scenario was not exposed to risks and the Commission has not identified other information that would indicate that this is the case. Furthermore, Czechia confirmed that the use of large SFNs using DVB-T2 technology was essential for the transition without creating interference ⁽¹⁶¹⁾.

⁽¹⁵⁹⁾ See for example recital (23) of the Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code. OJ L 321, 17.12.2018, p. 36–214.

⁽¹⁶⁰⁾ The duration of the simulcast period is assessed in the section on proportionality (section 5.3.2.4).

⁽¹⁶¹⁾ The table in recital (64) of the Opening Decision shows that approximately 1,7 and 1,8 million persons respectively receiving TV via Mux21 and Mux22, would have suffered from interference if the operators would have tried to set up large SFNs using DVB-T rather than DVB-T2.

- (320) The Commission also considers that a simulcast period when upgrading the technologies of the networks (however of a reasonable duration) can minimise disruptions and social costs, being therefore a reasonable practice to ensure continuity of broadcasting. The Commission notes that the operation of transitional networks was required in order to implement a simulcast period, during which the two broadcasting technologies (i.e. DVB-T and DVB-T2) would simultaneously run in parallel. In addition, if Czechia would have decided the technological upgrade after the release of the 700 MHz (e.g. in 2024), the remaining available spectrum for DTT services would not be sufficient to set up such transitional networks, preventing the implementation of a simulcast period as a regulatory intervention in a future upgrade of the networks.
- (321) The Commission also notes that the choice of HEVC compression standard was a reasonable choice in order to transition to more spectrum-efficient technologies, which the EPaC Decision calls upon Member States to consider and facilitate.
- (322) In view of the above, the Commission accepts that the regulatory obligations put in place by Czechia in the context of the release the 700 MHz fall into its margin of discretion and achieved some regulatory objectives of public interest. Since the eligible costs covered under the notified measure (the costs of the and operation of the transitional networks) were incurred in order to comply with these regulatory obligations imposed in the context of the release of the 700 MHz band, it could be considered that those costs are direct costs of the migration or reallocation of spectrum use within the meaning of Article 6 of the EPaC Decision. However, in order for the compensation of those costs to be necessary, it has to be targeted towards a situation where that objective could not be delivered by the market alone, meaning that it should aim at remedying a market failure.

5.3.2.2.2. On the existence of a market failure

- (323) Against this background, the Commission will assess whether the aid in this case is needed and targeted to address a situation where it can bring about a material improvement that the market cannot deliver itself, for example, by remedying a market failure. The assessment of the existence of a market failure is relevant in the case at hand given that, if the market alone could have covered itself the costs for operation of the transitional networks, the aid would result in an undue distortion of competition on the market for the broadcasting transmission services in Czechia.
- (324) First, the Commission differentiates between the regulatory obligations imposed by Czechia (i.e. the upgrade to DVB-T2/HEVC and the operation of transitional networks) and the notified measure (i.e. that aims to provide compensation of the costs related to the operation of the transitional networks). While the regulatory measures alone could be beneficial for the development of DTT (recitals (267)-(269)) and may have positive effects (recitals (306)-(307)), the Commission considers that the compensation lacks an incentive effect because the three DTT operators were in a position to absorb the regulatory costs imposed by Czechia without putting at risk the continuity of DTT services (recital (292)). On the contrary, the share of DTT services among TV broadcasting services has remained relatively stable in Czechia, also after the transition (i.e. a share of 52.9% in 2023) (recital (102)). Absent an exceptional situation, which the Commission could not identify in the present case (nor there is proof submitted as regards the existence of such an exceptional situation), undertakings are expected to bear the costs that are inherent to their economic activity.
- (325) Therefore, since the investment would have taken place in the absence of the measure, this already indicates that the notified measure does not bring a material improvement, as the market could not deliver that outcome by itself. Further, even in the assumption that costs of the regulatory obligations imposed by Czechia could have outweighed the incremental benefits for the three beneficiaries (recital (299)), the Commission has found that the three beneficiaries were in a position to absorb those costs for compliance with the regulatory obligations. The Commission recalls that the costs of regulatory obligations are inherent to the economic activity of operators and should in principle be borne by the undertakings operating in that market. In any case, a market failure (thus the necessity of aid) cannot be based on the need to preserve a certain level of profitability of the beneficiaries of the envisaged measure.

- (326) In addition, the necessity of the notified measure is also negated by the fact that CDG upgraded network 3 to final network 23 without any compensation. The simulcast of the TV broadcasting of network 3 was ensured using transitional network 12 operated by CRa, CDG being a subsidiary of the CRa group. Nevertheless, the fact remains that the three beneficiaries could reuse the partly subsidised equipment in their final networks, while CDG covered in full those costs, without any public support.
- (327) One beneficiary argued in this regard that Czechia had to find a compromise solution acceptable to the DTT operators that held rights of use in the 700 MHz band, otherwise exposing itself to the risk of long-term litigation and international arbitration (recital (196)). However, a market failure cannot be established on the basis of a potential risk of litigation, but it needs to be established whether the market would not have produced the same outcome, in the absence of the compensation covered by the notified measure. Moreover, the notified measure does not concern a settlement during a damage claim action, but compensation for regulatory costs.
- (328) In any case, the Commission notes that there were already measures put in place to ensure that the beneficiaries continue their activities as DTT providers after the release of the 700 MHz band and beyond the initial expiration date of the rights of use in that band. Czechia prolonged the rights of use of spectrum for the provision of the DTT services of the three beneficiaries, at their request, while providing State support for the upgrade and retuning of the DTT networks (Decision in case SA.55742). When making the necessary investments in order to comply with the regulatory obligations imposed for the release of the 700 MHz band, the three beneficiaries necessarily took these elements into account, while bearing the risk that at that moment there was no Commission decision approving the notified measure and that the aid was conditional upon the adoption of such a decision.
- (329) Therefore, the measure cannot be considered necessary given that it does not aim at remedying a market failure.

5.3.2.3. Appropriateness of the measure

- (330) An aid measure cannot be considered compatible with the internal market if it is not appropriate, that is to say if the same outcome is achievable through other, less distortive policies or aid instruments. In the Opening Decision, the Commission mentioned several possible approaches to achieve the same objectives.

5.3.2.3.1. On whether the own interest of DTT operators could have been sufficient

- (331) Noting the possible own interest of DTT operators to invest in the technological upgrade, the Commission raised doubts that the regulatory obligation could have sufficed as the most appropriate instrument to reach the same objective (recital (137) of the Opening Decision). The Commission also expressed the view that the early withdrawal of the rights together with a new procedure for assigning the rights of use of spectrum for broadcasting services broadcast with DVB-T2/HEVC standards might have been a more appropriate, less restrictive mean of addressing the objective of the measure (recital (137) of the Opening Decision).
- (332) The Commission considers that the three DTT operators were in a position to bear the regulatory costs which are inherent to the economic activity of DTT operators without triggering a risk of continuity for DTT services (recital (329)). Similarly, the Commission also considers that the notified measure lacks incentive effect (recital (301)).
- (333) Therefore, the Commission finds that taking into account that the DTT operators would have had interest in incurring the investment costs, the imposition of regulatory obligations would have been sufficient to achieve the objectives pursued by Czechia, namely to ensure the continuity of the provision of services on the DTT platform and ensure the migration of those services in the sub-700 MHz band while providing for a technological upgrade, without the need for compensation for the operation of transitional networks. Therefore, the imposition of such regulatory obligations alone, without the compensation of the eligible costs, would have been more appropriate.

5.3.2.3.2. On whether the information/certification campaign could have been sufficient

- (334) In the Opening Decision, the Commission expressed doubts also on whether information/certification campaigns would not have been sufficient to inform end users about the need to replace the receiving equipment. The Commission indicated that, taking into account that the certification of TV sets using the DVB-T2 standard started in 2016, the fact that sales of compatible equipment increased since 2016 did not seem sufficient, if at all relevant, to demonstrate the appropriateness of using transitional networks to show the compatibility of the measure. Quite the contrary, it rather suggested that the certification might have been sufficient to ensure that households have access to the migrated television service by 2020 (recitals (133)-(134) of the Opening Decision). The Commission also argued that a long simulcast starting in 2017 did not seem appropriate, considering that the information campaign only started in October 2019 and that the release of the 700 MHz band was expected by June 2020 (recital (135) of the Opening Decision)
- (335) Czechia insisted that the data on the increase in sales of compatible receiving equipment is relevant for the duration of the simulcast, arguing that the increased sales of compatible receiving equipment and widespread acceptance of the equipment is a substantial indicator of the appropriateness of the parallel broadcasting approach (recital (116)).
- (336) Czechia clarified that the information campaign related to the switch-off of the existing DVB-T networks was not launched until October 2019. However, other parts of the information campaign were already launched following the adoption of the 2016 Strategy in mid-2016 (recital (116)). At the same time, one of the complainants argued that this statement is not well supported by evidence. In its view, the nation-wide information campaign kicked off only in October 2019 (recital (150)). One of the beneficiaries indicated that an information campaign was also carried out by DTT operators, mainly financed directly by them (recital (199)). The beneficiary insisted that transitional networks had substantially minimised negative social impacts and secured TV continuity, motivating importers (recital (200)).
- (337) The Commission has already explained that the compensation for the simulcast costs lacks an incentive effect because the three beneficiaries would have invested on their own initiative (recital (301)) and that the notified measure is not necessary (recital (329)). Against these findings, and regardless of when the certification campaign actually started, the Commission considers that an information campaign can achieve the objective of adequately informing households about the need to replace the equipment, in order to ensure the continuity of the reception of the DTT services. The certification of compatible receiving equipment can also contribute to achieving the objective for households to have access to the necessary equipment. Nevertheless, in the context of a technological upgrade of the networks, the Commission does not rule out the appropriateness of a simulcast (however of a reasonable duration⁽¹⁶²⁾) in order to facilitate the technical switch between two technical transmission standards (i.e. DVB-T and DVB-T2). Therefore, the conclusion on the appropriateness of the notified measure in view of the possibility of relying on the information/certification campaign depends on the proportionality of the duration of the simulcast. For the reasons set out in section 5.3.2.4.1, the Commission considers that the duration of the simulcast lacks proportionality.

5.3.2.3.3. On the possibility of granting vouchers to households for replacing the receiving equipment

- (338) The Commission also expressed doubts that providing financial vouchers to households in order to compensate costs borne by households would not have been more appropriate and less distortive than compensating costs for investing in upgraded networks incurred by DTT operators. Support to end-user could be targeted to those in need and be technologically neutral. The possibility of providing compensation in particular for end-users is mentioned in the EPaC Decision (recital (136) of the Opening Decision and recital (16)).

⁽¹⁶²⁾ The duration of the simulcast period is assessed in section 5.3.2.4.

- (339) In this regard, Czechia recalled that financial vouchers to households would have been costlier for the state. In addition, vouchers also entail distribution costs and a period of 1-2 years would have been needed to pass the relevant legislation (recital (118)). One of the beneficiaries submitted that direct subsidies to households would have been several times more costly for Czechia, while even social vouchers would have been twice more expensive than the budget allocated under the notified measure (recital (202)). On the other hand, one of the complainants argued that direct support of households would be much less distortive, less costly and technologically neutral (recital (148)).
- (340) The Commission notes the information pointing to the fact that financial vouchers would have been costlier for the state. However, the Commission considers the link between the operation of the transitional networks and the incentive provided for households to upgrade receiving equipment to be indirect and weak, in comparison with the direct support provided to households through the financial vouchers for acquiring new equipment.
- (341) Furthermore, Czechia argued that the simulcast period was necessary in order to stimulate the households to change their equipment. However, the Commission considers that the duration of the simulcast (also covered by the compensation under the notified measure) is disproportionate for the reasons explained in section 5.3.2.4.1. In this context, the Commission does not consider that the reimbursement of the costs for the operation of the transitional networks of a disproportionately long simulcast to DTT operators is an appropriate measure to stimulate households to upgrade their receiving equipment. This is because a compensation provided to DTT operators for the costs of operating transitional networks does not provide any direct financial compensation to end-users. In addition, the length of the simulcast does not provide any direct incentive for end-users to acquire compatible receiving equipment. Regardless of the simulcast period, end-users could postpone the acquisition of compatible equipment towards the end date of the transition (no matter when that date is set) and not before. Further, Czechia has also explained that for the upgrade to DVB-T2 (recital (96)), the broadcasters had no commercial interest and had manifested their strong opposition to finance any costs (recitals (165) and (115)). This upgrade was not accepted by the market as a major innovative step, unlike the analogue-to-digital switchover (recital (126)). Those elements, which point to lack of interest from TV audience, contradict any significant incentive for households to upgrade their receiving equipment stemming from the prolonged operation of the transitional networks.

5.3.2.3.4. On the possibility of delaying the release of the 700 MHz band

- (342) The Commission also expressed doubts on whether delaying the release of the 700 MHz band would not be a more appropriate measure to achieve the objectives pursued by Czechia with the notified measure. In this regard, the Commission noted that the EPaC Decision enables Member States to delay up to two years the release of the 700 MHz band for reasons pertaining for instance to the need to ensure, and the complexity of ensuring, the technical migration of a large amount of the population to advanced broadcasting standards, or to the financial costs of transition exceeding the expected revenue generated by award procedures (recital (137) of the Opening Decision). That regulatory intervention would have not disturbed the activities, during the validity of the rights of use, of right holders, which rights of use were to expire before June 2022 ⁽¹⁶³⁾.
- (343) Czechia explained that the possibility under the EPaC Decision of delaying the release of the 700 MHz band for up to two years was provided in practice only to countries bordering non-EU countries for reasons of international coordination. Czechia rejected this possibility, considering that compliance with the deadline was feasible and possible in the given timeframe (recital (120)).

⁽¹⁶³⁾ This would concern CRa (right of use ended on 11 May 2021) and Digital Broadcasting (right of use ended on 4 March 2022). The Commission notes that this would have concerned the two private beneficiaries that were required to construct and operate transitional networks and would have excluded the public broadcaster Česká televize and the private operator CDG, which is the only operator that was not required to construct and operate a transitional network.

- (344) Nevertheless, the Annex to the EPaC decision lays down the justified reasons for a delay for the release of the 700 MHz band, i.e. unresolved cross-border coordination issues resulting in harmful interferences; the need to ensure, and the complexity of ensuring, the technical migration of a large amount of the population to advanced broadcasting standards; the financial costs of transition exceeding the expected revenue generated by award procedures; force majeure.
- (345) The Commission acknowledges the complexity of the situation regarding the release of the 700 MHz, involving a technical transition for the DTT platform in Czechia and triggering the need for international coordination. At the same time, the Commission notes that Czechia considered that compliance with the deadline set out in the EPaC Decision was feasible. Indeed, Czechia designed the 2016 Strategy and the Technical Transition Plan in order to achieve that objective within the required timeframe. Further, the Commission notes that delaying the release of the 700 MHz would also represent a delay for the use of that spectrum band for advanced mobile communications services in Czechia. In addition, it was reasonable to consider that the revenue derived from the award procedures of the 700 MHz would have far exceed the migration costs ⁽¹⁶⁴⁾.
- (346) In this context, the Commission considers that not requesting a delay for releasing the 700 MHz band falls within the margin of discretion of Czechia. On balance, the Commission finds reasonable Czechia's decision not to request a delay for releasing the 700 MHz band when confronted with carrying out the upgrade of the networks by 2020.

5.3.2.3.5. Conclusion on the appropriateness

- (347) The Commission considers that there is no need to provide compensation for the simulcast because the own interest of the three DTT operators would have sufficed to deliver the regulatory outcome. Furthermore, an information/certification campaign together with a simulcast period (however of a reasonable duration) would have been more adequate to inform and incentivise end-users to replace their receiving equipment. Lastly, the reimbursement of the costs incurred by DTT operators for the operation of a disproportionately long simulcast could only provide a weak and indirect stimulus to households to upgrade their receiving equipment, when compared to the direct financial support that financial vouchers to end-users could have provided. Therefore, the Commission considers that the notified measure is not appropriate.

5.3.2.4. Proportionality of the measure

- (348) The measure must be proportionate to reach the objectives it aims to achieve. Aid is considered proportionate if its amount is limited to the minimum necessary for the aided activity to take place and the potential distortions of competition are minimised.
- (349) In the Opening Decision, the Commission expressed doubts on the duration of the simulcast period (i.e. the length of the operation of parallel broadcasting), on whether the measure is limited to compensating costs that have not already been compensated by existing measures, on the relevance of certain parameters to calculate the compensation, and on whether the accelerated implementation of the DVB-T2 standard would not be outweighed by the commercial benefits in light of the funding needs of the beneficiaries. The Commission also noted that the aid amount does not seem to take into account the time remaining until the initial end of validity of the frequency assignments or their prolongation until 2030 as a result of the Digital Amendment (recital (144) of the Opening Decision).

⁽¹⁶⁴⁾ The auction phase of the tender for granting of the rights to use radio frequencies in the 700 MHz and 3 400–3 600 MHz frequency bands resulted in CZK 5 596 million (approximately EUR 223 million) (PRESS RELEASE: CTU has completed the auction of frequencies in 700 MHz and 3 400–3 600 MHz bands | Český telekomunikační úřad (gov.cz)).

5.3.2.4.1. On the duration of the simulcast

- (350) In recital (141) of the Opening Decision, the Commission noted that the duration of the simulcast exceeded what is normally understood as a transitional period (3-4 months) for parallel broadcasting necessary for technical reasons. The Commission also noted that CTO had considered that a period of 6 months was unnecessarily long at the time of the analogue-to-digital switchover. Czechia had argued that the duration was decided on the basis of households and companies' needs. The Commission noted that data concerning increase of sales of compatible receiving equipment seemed irrelevant for demonstrating the proportionality of the duration of the simulcast. The Commission preliminarily indicated that a longer simulcast period seemed primarily beneficial to DTT operators aiming at accustoming households to a new TV offer.
- (351) During the formal investigation procedure, Czechia insisted that the duration of the simulcast was established taking into account primarily the needs of households, reducing the number of such households that would be forced to invest in a new receiver outside the natural renewal cycle. It was also necessary to stimulate the retail market (recitals (121)-(122)). The duration was also necessary to take into account aspects such as weather (e.g. replacement of transmitting antenna systems is not practical in winter) and the capacity of support companies (a significantly reduced simulcast would not have allowed time for the maintenance for the antenna equipment in households). In addition, ensuring the practical verification, construction and operation of large SFNs was also taken into consideration for the duration of the simulcast period (recital (123)). A shorter period could have led to technical and economic problems (recital (124)).
- (352) Czechia further indicated that the use of transitional networks allowed for a seamless transition to the DVB-T2 standard for all TV stations, which could not be achieved by a direct switchover, i.e. in a short period of 3-4 months, as assumed by the complainants (recital (125)). Czechia explained that the simulcast duration is not accurately described to be 3 ½ years, but should be calculated for each network (e.g. the average length of simulcast for network 1 was 19 months).
- (353) Czechia disagreed that the 6 months period for a simulcast during the analogue-to-digital switchover is comparable. The analogue-to-digital switchover (2008-2012 in Czechia) was accepted by the market as a major innovative step bringing significant added value, unlike the mandated release of the 700 MHz band (recital (126)). Czechia recalled that the simulcast had been limited to the minimum necessary and that the three DTT operators did not realise any revenue from the transitional networks.
- (354) Czechia also considered that the duration of the simulcast falls entirely within the national competence and is based on technical and economic aspects of the transition to the new broadcasting standard, but also takes account of the social dimension of the process (recital (128)).
- (355) One of the beneficiaries indicated that a much more limited timeframe (approximately 3-4 months instead of the proposed 2-3 years) could only be based on a purely technical migration involving direct frequency re-farming and would not take account of the need for socially acceptable support and motivation of citizens and households to replace their receivers and switch to DVB-T2, as designed by Czechia (recitals (204)-(205)). This beneficiary argued that the COVID-19 pandemic showed the robustness of the strategy. The beneficiary confirmed that the average effective duration of the simulcast in network 1 was 19.5 months (recital (203)). It explained that in its view the upgrade to DVB-T2 was premature, and households and broadcasters were not keen at that stage to obtain an enhanced product (recital (206)).
- (356) On the other hand, one of the complainants considered that any duration of the simulcast beyond 3-4 months (or even 6 months) is not justified. The complainant disagreed with Czechia's arguments that the analogue-to-digital switchover is not comparable to the technological upgrade to DVB-T2/HEVC (recital (151)).
- (357) The Commission notes that it does not question the national competence to adopt regulatory measures for the DTT platform (in compliance with the EU framework) on account of the technical, economic and social dimension of the migration process. The Commission must however assess whether the notified compensation for costs related to those regulatory measures was proportionate. That compensation covers the costs for the operation of the transitional networks during the entire simulcast period.

- (358) In this regard, the Commission considers that the duration of the simulcast is not justified by the objective to incentivise households (to change their equipment and retailers (to import compatible equipment)). Firstly, the Commission does not consider that the operation of transitional networks provided households with more flexibility to replace their receiving equipment. In particular, households could start acquiring compatible receivers since the launch of the certification campaign in 2016 until the release of the 700 MHz band in 2020. It is not clear how the operation of transitional networks further contributed to this process. As indicated in the Opening Decision, the figures of sales of compatible receivers do not demonstrate the adequacy of the duration of the simulcast. The Commission considers that the reimbursement of the costs for the operation of transitional networks could only provide an indirect and weak incentive to households for the upgrade of the receiving equipment (recital (340)). Furthermore, the Commission notes that Czechia explained that the upgrade to DVB-T2/HEVC was not seen as a major innovative step (recital (126)), recalling that households and broadcasters did not have an interest to upgrade. Therefore, households could not be strongly incentivised to acquire new equipment by the operation of transitional networks. Conversely, the long simulcast could actually incentivise households to postpone the upgrade until a moment close to the switch-off of the original DVB-T networks. Therefore, the Commission does not accept that the duration of the simulcast is proportionate on the basis of the social dimension of the migration process given that this has not been adequately supported by evidence.
- (359) Therefore, the Commission considers that the disproportionately long simulcast primarily benefited the three DTT operators, contributing to accustom and maintain their customer base. Furthermore, as it is explained in section 5.3.2.4.3, the Commission considers that the calculation of the depreciation costs based on the accounting life of the equipment does not reflect the longer economic life of the equipment, thus resulting in higher depreciation costs than necessary, with the effect that the measure also finances the upgrade of the final networks through the reuse of the partly subsidised equipment. Given that the effects of depreciation accrue over time, the disproportionate duration of the simulcast further amplifies the transfer of part of the financing to the final networks.
- (360) The Commission could agree that a short technical simulcast may be needed and proportionate in order to facilitate the technical switch between transmission standards (i.e. DVB-T to DVB-T2) by households (e.g. retuning). In this respect, the Commission considers that the analogue-to-digital switchover can be compared from a technical perspective ⁽¹⁶⁵⁾ (or even more complex technically than the release of the 700 MHz band) with the release of the 700 MHz band, thus it is relevant to note that the Czech regulator had considered that a period of six months was unnecessarily long at the time of the analogue-to-digital switchover. The Commission does not consider that a longer duration is justified by other technical considerations raised by Czechia, such as the complexity of the DVB-T2 deployment, the need to replace transmitting antenna systems during winter and the capacity of support companies providing the necessary services, given that those difficulties were similar during the analogue-to-digital switchover. As regards the need to stabilize large SFNs, Czechia has not provided concrete evidence on the duration of such works. Furthermore, the Commission notes that one of the beneficiaries indicated that a much more limited timeframe of approximately 3-4 months could be used for a purely technical migration involving direct frequency re-farming. In view of these elements, the Commission considers that a short technical simulcast with a duration up to six months could be justified.
- (361) In other cases, the Commission has accepted a simulcast duration of up to 1 year, while noting that the national authorities would reduce it to six months if practicable ⁽¹⁶⁶⁾. However, the duration of the notified measure (even assuming an average actual duration of 19.5 months per transmitter site in network 11) is disproportionately long. In any event, the Commission notes that the other two transitional networks have even longer average planned durations according to the Technical Transition Plan (i.e. 31 months for transitional network 12 and 24 months for transitional network 13).

⁽¹⁶⁵⁾ The analogue-to-digital switchover also required the update of antennas in households by service companies. The deployment and stabilisation of DVB-T2 networks, as compared to the deployment of DVB-T, cannot justify the difference in duration from 6 months to 19.5 months.

⁽¹⁶⁶⁾ Commission decision of 17.11.2010 in case State aid N 671b/2009 – Slovakia Switch-over to digital TV broadcasting in Slovakia. C(2010)7690 final (OJ C 039, 08.02.2011). See footnote 17: “The supposed length is up to 12 months. The Slovak authorities have indicated however that they would reduce the length of the simulcast period to up to 6 months, if a shorter simulcast period proves to be satisfactory.”

- (362) Therefore, the Commission finds the compensation of the costs for the operation of the transition networks during the simulcast period foreseen by the notified measure to be disproportionate.

5.3.2.4.2. On whether the eligible costs have been compensated by other aid schemes

- (363) The Commission also sought comments to verify that the eligible costs have not been compensated by other aid schemes (recital (129)(c) of the Opening Decision).
- (364) Czechia confirmed that the measure is limited to compensating costs that have not already been compensated by existing measures, such as those approved under the Decision in case SA.55742 and the Decision in case SA.60062. In particular, CTO carried out a detailed verification of the eligible costs submitted by the beneficiaries in order to avoid the double compensation. Czechia emphasized that all the relevant costs are recorded in the accounting of each beneficiary (recital (135)).
- (365) One of the complainants argued nevertheless that the audit carried out by CTO cannot address the doubts of the Commission and considered that the experts that carried out the audit may be biased (recital (152)). Czechia replied that such allegation is irrelevant and baseless, explaining that CTO conducts its audits according to the legal framework.
- (366) The Commission finds that the complainant's allegation is hypothetical and unsupported by evidence. Further, the Commission did not find any evidence or indications that the audit carried by CTO or by experts was biased. The Commission considers therefore, on the basis of the explanations provided by Czechia, that the measure is limited to compensating costs that have not already been compensated by other measures and notes that the notified measure cannot be cumulated with other measures (section 2.3.5).

5.3.2.4.3. On the relevance of certain parameters to calculate the compensation

- (367) In recital (137) of the Opening Decision, the Commission expressed doubts on the relevance of using the asset depreciation to determine the compensation and on whether the notified measure ensures that the aid is kept to a minimum. The Commission noted that the measure did not make a distinction between equipment that remains in the final networks and that that does not. The Czech authorities have not demonstrated that the proposed compensation methodology does not lead to overcompensation in light of the funding need of the aid recipients.
- (368) One of the beneficiaries insisted that the correct definition of the scope of the notified measure must be consistently maintained, since the measure concerns only simulcasting, the costs of the upgrade from DVB-T to DVB-T2/HEVC being only partially compensated on the basis of the amortisation (recital (206)).
- (369) Both Czechia and CRa explained that the compensation will compensate the real costs (OPEX and CAPEX) recorded in the accounting of each beneficiary, actual and incurred during the simulcast for each beneficiary. Furthermore, they explained that CAPEX costs are calculated as the real depreciation of each relevant asset used for the broadcasting in the transitional networks. Depreciation is a real cost, calculated in an objective manner and generally considered to be the best practice to quantify a reduction in the value of an asset over time, in particular in relation to wear and tear. Depreciation in accounting records should reflect the reality, according to the Czech law on accounting and prevents from double counting of the same costs (recitals (209)-(210), (129)-(133)).
- (370) The Commission acknowledges that depreciation/amortisation is a standard practice to quantify wear and tear over time. However, accounting depreciation costs are only adequate to calculate the costs linked to the operation of the transitional networks to the extent that they are based on the economic life of the equipment. This is particularly important in the case at hand given that the equipment has been re-used in the final networks. If the equipment is depreciated at a faster rate (than the economic life) during the operation of the transitional networks, and those higher depreciation costs are compensated by the State, this has the effect of financing to a great extent the final networks. Further, in the notified measure, depreciation costs are the main component of the compensation (footnote 60).

- (371) According to the notified measure, depreciation costs have been calculated based on the accounting life of the equipment ranging between [below 10] years, save for the cooling equipment and UPS where that period was of [5 - 15] years (footnote 63). Nevertheless, the Commission considers that the economic life of the equipment used for infrastructure supporting digital video broadcasting is at least 10 years⁽¹⁶⁷⁾. This finding is consistent with the explanations of one of the beneficiaries (CRa) that investment cycles in the sector generally encompass 12-15 years (recital (178)). Further, this is also confirmed by a business plan from 2010 of one of the beneficiaries for a DVB-T network submitted by Czechia (recital (134)). The business plan covered the period [..], only foreseeing CAPEX in year [...], thus assuming an economic life of at least [10 – 15] years.
- (372) Therefore, the Commission considers that the notified compensation is higher than necessary in respect of the CAPEX costs of the equipment (i.e. approximately 200% higher, when calculated using a 5-year accounting life instead of 10-year economic life). This way, the notified compensation for the operation of the transitional networks in fact also contributes to the financing the upgrade of the final networks (i.e. approximately 50% of the eligible CAPEX costs of the transitional networks are transferred to the final networks), given that the reused equipment could be used until the end of its economic life.
- (373) The disproportionately long duration of the operation of the transitional networks further amplifies this effect since depreciation costs accrue over time. The Commission estimates that the notified measure includes excess depreciation amounting to 16 % for *Česká televize*, 26 % for CRa and 20 % for DB of the total CAPEX of the equipment. This excess depreciation is thus transferred to the financing of the final networks⁽¹⁶⁸⁾. Therefore, the equipment is subsidised in a disproportionate manner for its use in the transitional networks, with the effect of reducing the total investment costs of the upgraded final networks. Lastly, in addition to the reuse of the subsidised equipment in the final networks, the beneficiaries would still benefit from the compensation of costs for the installation, configuration and stabilisation of the upgraded equipment when that equipment is re-used in the final networks given that the main part of those activities already took place for the construction of the transitional networks.

5.3.2.4.4. On whether the accelerated implementation of the DVB-T2 standard would not be outweighed by the commercial benefits in light of the funding needs of the beneficiaries

- (374) In recital (137) of the Opening Decision the Commission expressed doubts that the accelerated implementation of the DVB-T2 standard would not be outweighed by the commercial benefits in light of the funding needs of the aid recipients, noting that the upgraded technologies provide commercial benefits in terms of increased transmission capacity and quality. The Commission also noted that beneficiaries could use the upgraded final networks (build on the basis of the transitional networks) until 2030. The Czech authorities have also not demonstrated that the aid covers the incremental impact (in terms of profitability) of a faster adoption scenario (i.e. the accelerated technological upgrade in view of the release of the 700 MHz band) compared to the counterfactual scenario of slower adoption (i.e. a market driven technological upgrade).
- (375) As explained in the section on the incentive effect (section 5.3.1.2.1), the Commission accepts that, absent the accelerated transition mandated by Czechia in the period 2017-2020, a natural market-led technological upgrade of the DTT networks would only have taken place as from 2022-2024 (recital (290)).

⁽¹⁶⁷⁾ The transmitters are one of the main elements of the DVB network in terms of CAPEX. The total cost of ownership of transmitters is calculated over 10 years. Source: 2014 GatesAir - Broadcast Transmission Systems – Efficiency and Total Cost of Ownership.

⁽¹⁶⁸⁾ The average duration of operation of the transitional networks was 19.5 months (network 11 - *Česká televize*), 31 months (network 12 - CRa) and 24 months (network 13 - DB) (recital (50)). This means that the notified measure seeks compensation for a depreciation of approximately 32% (*Česká televize*), 51% (CRa) and 40% (DB) of the equipment (based on accounting life of 5 years). However, the actual wear and tear of the equipment in the transitional networks (based on an economic life of at least 10 years) was approximately only half of that, i.e. respectively 16% for *Česká televize*, 26% for CRa and 20% for DB.

- (376) Nevertheless, the Commission notes that the operation of the transitional networks benefits mainly the three DTT operators, allowing them to transition to the upgraded technology while reducing the risk of a loss of audience in the process. Furthermore, the equipment covered by the compensation is partly reused in the final networks (recital (292)). As examined in section 5.3.2.4.3, the calculation of depreciation costs based on the accounting life of the equipment and not on its longer economic life results in a higher compensation for the wear and tear of the equipment for the use in the transitional networks, with the effect that the re-use of that equipment in the final networks reduces the total cost of investment in the final networks. The three DTT operators can also benefit from the costs of installation, configuration and stabilisation of the upgraded equipment when that equipment is re-used in the final networks given that the main part of those activities already took place for the construction of transitional networks. In addition, the three beneficiaries had a positive market outlook and investment predictability until 2030 following to the extension of their spectrum licenses (recital (293)).
- (377) Against this backdrop which points to commercial benefits and the transfer of part of the financing towards the upgrade of the final networks, the Commission has not received any business plans demonstrating the funding gap needs of the beneficiaries. Czechia referred to the updated ADL study. However, the Commission notes that the updated ADL study analysed several migration scenarios (i.e. upgrade with parallel broadcasting, upgrade without parallel broadcasting, and no upgrade), providing a qualitative and quantitative assessment of the costs of the different scenarios, but it did not estimate the potential revenues or the impact on the profitability of DTT operators of the technological upgrade. Further, the updated ADL study did not compare with the scenario of a slower-adoption scenario (i.e. as from 2022-2024). The Commission notes that it has not received any ex-post reconstruction of contemporary business plans either (recital (295)).
- (378) Therefore, the Commission finds that Czechia has not demonstrated that the costs of the operation of the transitional networks outweighed the commercial benefits (recital (298)).

5.3.2.4.5. Conclusion on proportionality

- (379) The Commission considers first that the compensation of the costs of the operation of the transitional networks (parallel broadcasting) is disproportionate as the simulcast lasted longer than necessary (i.e. 6 months and up to 1 year in duly justified situations).
- (380) Further, the calculation of depreciation costs was based on the accounting life of the equipment, which does not reflect its longer economic life. This leads to higher compensation for the wear and tear of the equipment from the use in the transitional networks, with the effect that the reuse of that equipment in the final networks reduces the total cost of investment in the final networks by the beneficiaries. In addition, the three DTT operators can benefit from the costs of installation, configuration and stabilisation of the upgraded equipment when that equipment is re-used in the final networks given that the main part of those activities already took place for the construction of transitional networks.
- (381) Lastly, the Commission could not establish that the aid is kept to a minimum since the information available does not demonstrate that the accelerated implementation of the DVB-T2 standard as a result of the regulatory obligations outweighed the commercial benefits and if so, to what extent (there was no funding gap analysis).
- (382) Therefore, the notified measure is not proportionate.

5.3.2.5. Transparency and cumulation

- (383) Czechia committed to publish the text of the measure as well as the information related to the beneficiaries of any aid that exceeds EUR 500 000 (recital (69)). Therefore, the measure complies with the transparency requirements.

- (384) Czechia confirmed that the measure cannot be cumulated with any other measure financing the same eligible costs (recital (67)) and that the aid beneficiaries would not be able to apply for depreciation for fiscal purposes of assets that are subject to compensation under the measure (recital (68)). Czechia excluded from the measure any costs that could be double compensated by other aid schemes (recital (366)). The Commission considers this is sufficient to prevent issues derived from cumulation with other support measures.

5.3.2.6. Negative effects of the measure

- (385) In recitals (148)-(149) of the Opening Decision, the Commission indicated that the measure helped DTT operators to remain competitive on the market while reducing their investment costs in updated equipment, which operators using other platforms (e.g. satellite to upgrade to DVB-S2/MPEG4) had to finance with private resources. The Commission indicated that the measure seemed to finance normal costs of the DTT operators, should they had aimed at keeping their market position providing advanced services. The Commission noted that the measure goes beyond maintaining the *status quo* that existed before the release of the 700 MHz band.
- (386) One of the complainants insisted that the measure favoured the least progressive TV technology, harming other platforms and customers. It gave examples of situations where FTA broadcasters could now use the DVB-T2 standard to offer pay-TV services and where the complainant (an IPTV provider) could have been open to provide a free-to-view offer (recital (154)).
- (387) Czechia explained that the release of the 700 MHz band happened relatively quickly after the release of the 800 MHz by DTT operators, which incurred the associated costs and the deterioration of their competitive situation to the benefit of competing platforms. It further submitted that an uncontrolled release of the 700 MHz band could also impact households. Czechia reported healthy competition between the different platforms (recital (138)), while fundamentally disagreed that the measure favoured the least progressive platform, arguing that the selection of technologies was only based on the recommendation in the EPaC Decision, while respecting compatibility with neighbouring countries (recital (140)).
- (388) One of the beneficiaries recalled that the measure only compensates operators affected by the regulatory change. It explained that the substitutability between platforms was low and only feasible from a technical point of view in the situation of Czechia, where other platforms (e.g. satellite, cable and IPTV platforms) had significantly lower market share than DTT and were pay-TV services (recital (212)).
- (389) The Commission considers that the notified measure relieves the three DTT operators from regulatory costs that are inherent to their activity, whereas operators using other platforms, such as satellite or cable, have to bear similar costs themselves. Therefore, the notified measure strengthens the competitive position of the three DTT operators to the detriment of operators using other platforms. Furthermore, the aid can cross-subsidise activities of the beneficiaries in other sectors and other Member States, given that CRA belongs to a group which is active at international level (footnote 31) and in several sectors of activity beyond DTT transmission services, and *Česká televize* as public broadcaster also competes with commercial broadcasters. The Commission considers that, despite the different business models of the different TV platforms in Czechia (i.e. FTA v pay-TV), significant distortive effects remain, as the existence of complaints from operators using other technological platforms shows. For example, the satellite platform is technically capable of providing FTA services. The IPTV platform could also be used to broadcast FTA channels, some operators already include them in their standard TV packages in other Member States⁽¹⁶⁹⁾. Further, Telly (IPTV provider) considered offering a free-to-view DIGI TV card in Czechia (recital (153)). The DTT platform is also technically capable of providing pay-TV services (even if the commercial project by Skylink/M7 in Czechia was not successful (recital (91))) and there is no legal obligation to provide only FTA services in that platform.
- (390) Therefore, the Commission confirms its preliminary finding that the measure had negative effects on competition.

⁽¹⁶⁹⁾ See for example FTA channels included in Movistar Plus (Telefonica) offering in Spain (source: Canales de TV incluidos en el nuevo Movistar Plus+).

5.3.2.7. Weighing the positive effects of the aid with any negative effects in terms of distortions of competition and adverse effects on trade

- (391) A carefully designed State aid measure should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (392) The Commission acknowledges the intention of the Czech authorities to ensure a smooth release of the 700 MHz band by terrestrial television services with limited impact on the viewers, aiming at ensuring a socially acceptable transition minimising possible disruptions. The Commission notes the positive effects of the regulatory measures (i.e. the operation of transitional networks) for the continuity of DTT services, which constitutes the primary source of FTA TV services in Czechia. The Commission further recognises the important role of FTA TV services for supporting pluralism and well-functioning democracies. However, the Commission considers that the notified measure (i.e. the compensation for the operation of the transitional networks) had limited positive effects (recital (308)).
- (393) The Commission notes that the measure entails negative effects, in terms of relieving DTT operators of part of the burden linked to regulatory obligations set by Czechia which are inherent to their economic activity. The Commission also considers that the measure does not have an incentive effect and is not targeted at solving a market failure justifying the need for public support to DTT operators does not exist. Similarly, the Commission does not consider that the measure is designed in an appropriate or proportional manner.

5.3.3. *Conclusions on the compatibility of the measure*

- (394) In light of the above, the Commission considers that the negative effects of the measure in terms of distortions of competition and adverse effects on trade outweigh its limited positive effects.
- (395) The Commission therefore finds that the notified measure is not compatible with the internal market under Article 107 (3) c) TFEU. The Commission has not identified other legal basis relevant for the compatibility of the notified measure and neither Czechia nor the interested parties provided information or proof in this regard.

5.4. **CONCLUSION**

- (396) The Commission finds that the notified measure constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union that is incompatible with the internal market.

HAS ADOPTED THIS DECISION:

Article 1

The notified measure State aid “Aid for terrestrial television parallel broadcasting in DVB-T2/HEVC” constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union that is incompatible with the internal market.

Article 2

The Czech Republic shall not pay out to the three beneficiaries (i.e. *Česká televize*, CRa and DB) any of the aid referred to in Article 1.

Article 3

This Decision is addressed to the Czech Republic.

Done at Brussels, 22 December 2025.

For the Commission
Teresa RIBERA
Executive Vice-President
